Supreme Court, U.S.
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No. OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 2006

Laurence Rene', Goodman

Petitioner

v.

UNITED STATES

Respondent

On Petition for Writ of Certiorari
to the United States Court of Appeals
For the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

Laurence Rene', Goodman
Petitioner Pro Se
C/o 299 Bear Drive
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Colorado, USA
303-277-1539

QUESTIONS PRESENTED

I. Whether the District Court, Tenth, First, and Eleventh Circuit Courts errored in finding the Congressional mandate of Title 26 U.S.C. § 6203 and regulations promulgated by the Secretary of the Treasury of Title 26 CFR §301.6203-1 invalid in contradiction to the decisions of the Third, Fifth, Sixth, Seventh, Eighth, and Ninth Circuit Courts.

II. Whether the judicial proceedings of the District Court sanctioned by the Tenth Circuit Court have decided federal questions in a way that appears to conflict with applicable decisions of this Court and have so far departed from the accepted and usual course of judicial proceedings as to call of an exercise of this Court's power of supervision.

III. Whether the decisions of the District Court, Tenth, First, and Eleventh Circuit Courts have decided an important issue involving the administration of income tax laws, finding the Congressional mandate of Title 5 U.S.C. § 706 invalid, in a way that appears to conflict with this Court's prior holdings.

PARTIES TO THE PROCEEDING

Laurence Rene', Goodman, hereinafter "Petitioner" is the party injured bringing this suit in my proper person without the aid of licensed counsel, and all the actions happened to the party injured within the venue and jurisdiction of this court.

Susan Meredith is an internal revenue service employee and was the original Respondent in the district court. On a motion from Respondent's attorney the district court ordered to substitute the United States for Susan Meredith as Respondent party despite established to the contrary, and in opposition to the intent of the mandamus statute. The Petitioner filed a Motion and Memorandum is opposition to Respondent's Motion to alter/amend caption to substitute the United States for Susan Meredith as the Respondent.

TABLE OF CONTENTS

QUESTIONS PRESENTED i
PARTIES TO THE PROCEEDING ii
TABLE OF CONTENTS.....iii
INDEX OF APPENDICES.....v
TABLE OF AUTHORITIES vi

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE TENTH CIRCUIT 1
OPINIONS BELOW 2
JURISDICTION 2
CONSTITUTIONAL, STATUTORY PROVISIONS,
AND REGULATIONS INVOLVED 2
STATEMENT OF THE CASE.....4

REASONS FOR GRANTING THE WRIT
I. The Petitioner alleges the District Court, Tenth, First, and Eleventh Circuit Courts errored in finding the Congressional mandate of Title 26 U.S.C. § 6203 and regulations promulgated by the Secretary of the Treasury of Title 26 CFR §301.6203-1 invalid in contradiction to the decisions of the Third, Fifth, Sixth, Seventh, Eighth, and Ninth Circuit Court. 8

A. Conflicts between the Courts of Appeal. 9

B. Conflicts relating to Form 4340 within Courts of Appeal. 12

II. The Petitioner alleges the judicial proceedings of the District Court sanctioned by the Tenth Circuit Court have decided federal questions in a way that appears to conflict with applicable decisions of this Court and have so far departed from the accepted and usual course of judicial proceedings as to call of an exercise of this Court's power of supervision. 16

A. Judicial proceedings appears to conflict with this Courts prior holdings in *Hawaii v. Gordon*, *Land v. Dollar*, *Dugan v. Rank*, *Larson v. Domestic, Foreign Commerce Corp.*, *Washington Legal Found. v. U. S. Sentencing Comm'n*, and *North Carolina v. Temple* stating that the United States was not the proper party. 16

B. Judicial proceedings appears to conflict with this Courts prior holdings in *Adicks v. S.H. Kress Co.*, and *U.S. v. Lovasco, Gonzales v. Buist*, *Holt v. United States, Telephone Cases,* and failing to show as matter of law the entitlement to summary judgment disposition beyond a reasonable doubt. 21

C. Judicial proceedings appears to conflict with this Courts prior holdings in *Lynch v. Household Finance Corp.*, *Matthews v. Eldridge*, and *Arnstrong v. Monzo*, denying the Petitioner 5th amendment due process of an evidentiary hearing. 23

III. The Petitioner alleges the decisions of the District Court, Tenth, First, and Eleventh Circuit Courts have decided an important issue involving the administration of income tax laws, finding the Congressional mandate of Title 5 U.S.C. § 706 invalid, in a way that appears to conflict with this Court's prior holdings. 25

A. The District Court decision sanction by Tenth Circuit appears to conflict with this Court's prior holdings. 25

B. Intracircuit conflict within the Tenth Circuit Court. 29

CONCLUSION.....30

INDEX TO APPENDIX

Appendix A – The opinion of the Tenth Circuit Court of Appeals affirming the District Court's decision to invalidate 26 C.F.R. 301.6203-1 and 26 U.S.C. 6203.

Appendix B – The opinion of the United States District Court for the District of Colorado.

Appendix C -- Notice of Appeal filed by Petitioner.

Appendix D – Order denying Petitioner's petition for rehearing en banc and for rehearing en banc an for rehearing by panel.

TABLE OF CASES AND AUTHORITIES

CONSTITUTIONAL AMENDMENTS:

U.S. Const. amend. V.....3, 23
U.S. Const. art. I § 8.....3,7, 25, 29

STATUTES AND REGULATIONS:

28 U.S.C. § 1254(1).....2
26 CFR § 301.6203-1(2004).....2, 4, 6, 8, 13, 16, 20, 22, 25
5 U.S.C. § 706 (2)(A),(C),(D)(1996).....3, 28
26 U.S.C §6203(2002).....3, 8, 14, 20, 25
31 CFR Part 1, §2 Appendix B of Subpart C 2, 20, 21

CASES:

United States v. Lovasco,
431 U.S. 783, 97 S. Ct. 2044, 52 L. Ed. 2d 752 (1977).....7, 22
March v. IRS 335 F.3d 1186 (10th Cir.2003).....8
Hawkws v. IRS, 467 F.2d 787 (1972).....8
Schwartz v. IRS, 511 F.2d 1303, 1305 (D.C.Cir. 1975).....8
Roberts v. Comm. of IRS, 329 F.3d 1224 (11th Cir. 2003).....9
Robinson v. United States, 920 F.2d 1157, 1158 (3rd Cir.1990).....9
Stallard v. U.S., 12 F.3d 489, 493 (5th Cir.1994).....9
Gentry v. U.S., 962 F.2d 555, 558 (6th Cir. 1992).....9
Planned Investments, Inc. v. United States,
881 F.2d 340, 343 (6th Cir. 1989).....10
United States v. Miller,
318 F.2d 637, 638-39 (7th Cir. 1963).....10, 13
Essex v. Vinal, 499 F2d. 226, 230 (8th Cir. 1974).....11
Brafman v. United States,
384 F.2d 863, 865-866 (9th Cir.1967).....11
Arford v. U.S., 934 F.2d 229, 232, (9th Cir. 1991).....11
Koff v. U.S., 3 F.3d 1297, 1300, (9th Cir. 1992).....11
United States v. Coson, 286 F.2d 453, 465 (9th Cir. 1961).....12
United States v. Chila,
871 F.2d 1015, 1017-18 (11th Cir.1989).....14
Geiselman v. United States, 961 F.2d 1, 5-6 (1st Cir.1992).....14
Weimerskirsh v. Commissioner,
596 F.2d 358, 361 (9th Cir. 1979).....14

Carson v. U.S. 560 F.2d 693, 696-97 (5th Cir. 1977).....14
Coleman v. U.S., 704 F.2d 326 (6th Cir. 1983).....14

U.S. v. Lochamy, 724 F.2d 494, 498 (5th Cir. 1984).....14
Huff v. United States, 10 F.3d 1440, 1445-46 (9th Cir. 1993).....14
Stallard v. U.S., 12 F.3d 489, 493 (5th Cir.1994).....14
Portillo v. C.I.R., 988 F.2d 27, 29 (5th Cir. 1993).....15
Universal Camera Corp. v. NLRB,
340 U.S. 474, 71 S. Ct. 456, 95 L. Ed. 456 (1951).....15
Rice v. Sioux City Memorial Park Cemetery Co., Inc.,
349 U.S. 70, 75 S. Ct. 614, 99 L. Ed. 897 (1955).....15
Goldlawr, Inc v. Heiman,
369 U.S. 463, 82 S. Ct. 913, 8 L. Ed. 2d 39 (1962).....15
Larson v. Domestic and Foreign Commerce Corp.,
337 U.S. 682 (1947).....17
Hawaii v. Gordon, 373 U.S. 57 (1963).....17
Land v. Dollar, 330 U.S. 731 (1947).....17
Dugan v. Rank, 372 U.S. 609 (1963).....17
Washington Legal Found. v. United States Sentencing Comm'n,
89 F.3d 897 (DC Cir. 1996).....18
Simmat v. U.S. Bureau of Prisons,
413 F.3d 1225, 1234 (10th Cir. 2005).....18
Washington v. Udall, 417 F.2d 1310 (9th Cir. 1969).....19
Gealer, ET AL. v. U.S., ET AL.,
82 AFTR 2d 98-5669, 98-5677 (1998).....19
North Carolina v. Temple, 134 U.S. 22 (1890).....20
Clark v. United States, 691 F.2d 837 (7th Cir. 1982).....20
Adicks v. S.H. Kress Co.,
398 U.S. 144, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970).....22
Norton v. Liddel, 620 F. 2d 1375, 1381 (10th Cir. 1980).....22
Gonzales v. Buist,
224 U.S. 126, 56 L. Ed. 693, 32 S. Ct. 463 (1912).....22
Holt v. United States,
218 U.S. 245, 54 L. Ed. 1021, 31 S. Ct. 2 (1910).....22
Telephone Cases, 126 U.S. 1, 31 L. Ed. 863, 8 S. Ct. 778.....22
Lynch v. Household Finance Corp., 405 U.S. 538, 552 (1972)...23

Matthews v. Eldridge, 424 US 319 (1976).....23
Arnstrong v Manzo, 380 US 545, (1965).....23
U.S. v. Deters, 143 F.3d 577 (10th Cir. 1998).....24
United States v. Doe 465 U.S. 605, 610 (1984).....24
Lugar v. Edmonson Oil Co., 457 U.S. 922, 926 (1982).....24
Rodriguez De Quijas v. Sheason/American Express, Inc.,
490 U.S. 477 (1989).....24
McNabb v. United States, 318 U.S. 332, 340 (1943) 24
Mallory v. United States, 354 U.S. 449 (1957).....24
Elkins v. United States, 364 U.S. 206 (1960).....24
Unites States v. Hale, 422 U.S. 171, 181 (1975).....24
Hobby v. United States, 486 U.S. 399 (1984).....24
Florida v. Rodriguez, 469 U.S. 1,7 (1984).....24
Morrill v. Jones, 106 U.S. 466, 467 (1882).....25
Gould v. Gould, 245 U.S. 151, 153 (1917).....26
U.S. v. Morton Salt Co.,
338 U.S. 632, 70 S.Ct. 357, 94 L.Ed. 401 (1950).....26
Chevron, U.S.A., Inc v. Natural Resources Defense, 104 S.Ct.
2778, 2781, 467 U.S. 846 (1984).....27
Louisiana Public Service Com'n v. F.C.C., 106 S.Ct. 1890, 476
U.S. 355, 90 L.Ed.2d 369, (1986).....27
Lyng v. Payne,
106 S.Ct 2333, 2341, 476 U.S. 926, 90 L.Ed 921, (1986).....27
Ragsdale v. Wolverine World Wide, Inc., 122 S.Ct. 1155, 535 U.S.
81, 152 L.Ed.2d 167 (2002).....28
FCC V. National Citizens Comm. for Broadcasting,
436 U.S. 775, 803 (1978).....28
Citizens to Preserve Overton, Park v. Volpe,
401 U.S. 402, 413-414 (1971).....28
Paperwork Reduction Act, Dole v. United Steel Workers,
494 U.S. 26, 110 S. Ct. 929, 932-33, 108 L. Ed.2d 23 (1990).....29
United States v. Collins,
920 F.2d 619, 630 & n. 13 (10th Cir. 1990).....29
Home Mortg. Bank v. Ryan, 986 F.2d 372 (10th Cir. 1993).....29
Commissioner v. Estate of Bosch, 387 U.S. 456, 457 (1967).....29
John Hancock Ins. Co. v. Bartels, 308 U.S. 180, 181 (1939).....29
Dickinson v. Petroleum Conversion Corp.,
338 U.S. 507, 508 (1950).....30
Scarborough v. United States, 431 U.S. 563, 567 n.4 (1977).....30

RULES:

Fed. R. Civ. P. 56(e).....22
Fed.R.Evid. Rule 901(a) and (b)(1).....7
Fed.R.Evid. Rule 301.....22
Sup. Ct. R. 10(a).....15
Sup. Ct. R. 10(c) 24, 25, 30

MISC. AUTHORITIES:

House Congressional Record, 3-27-43, page 2580.....7

No. _____ _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2006

Laurence Rene', Goodman

Petitioner

v.

UNITED STATES

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Petitioner Laurence Rene', Goodman respectfully prays that a writ of certiorari issue to review the order of the en banc United States Court of Appeals for the Tenth Circuit, entered on August 14, 2006, which affirmed, the order of the United States District Court for the District of Colorado entered on July, 28 2005 dismissing Petitioner's petition for a writ of mandamus.

OPINIONS BELOW

The opinion of the en banc United States Court of Appeals for the Tenth Circuit is not yet officially reported. The opinion of the original Panel of the Tenth Circuit is not officially reported. The opinion of the United States District Court for the District of Colorado is not officially reported. These opinions are attached in the Appendix.

JURISDICTION

The final order of the Tenth Circuit Court of Appeals was entered on August 14, 2006. The jurisdiction of this Court is invoked pursuant to Title 28, U.S.C. 1254(1)

CONSTITUTIONAL, STATUTORY PROVISIONS, AND REGULATIONS INVOLVED

31 CFR Part 1, § 2 Appendix B of Subpart C

Individuals are advised that Internal Revenue Service procedures permit the examination of tax records during the course of an investigation, audit, or collection activity. Accordingly, individuals should contact the Internal Revenue Service employee conducting an audit or effecting the collection of tax liabilities to gain access to such records, rather than seeking access under the provisions of the Privacy Act. (Emphasis added)

26 CFR § 301.6203-1 (2004) Method of assessment.

The district director and the director of the regional service center shall appoint one or more assessment officers. The district director shall also appoint assessment officers in a Service Center servicing his district. The assessment shall be made by an assessment officer signing the summary record of assessment. The summary record, through supporting records, shall provide identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment. The amount of the assessment shall, in the case of tax shown on a return by the taxpayer, be the amount so shown, and in all other cases the amount of the assessment shall be the amount

shown on the supporting list or record. The date of the assessment is the date the summary record is signed by an assessment officer. If the taxpayer requests a copy of the record of assessment, he shall be furnished a copy of the pertinent parts of the assessment which set forth the name of the taxpayer, the date of the assessment, the character of the liability assessed, the taxable period if applicable, and the amounts assessed.

26 U.S.C. § 2603 (2002) Method of assessment

"The assessment shall be made by recording the liability of the taxpayer in the office of the Secretary in accordance with rules of regulations prescribed by the Secretary. Upon request of the taxpayer, the Secretary shall furnish the taxpayer a copy of the record of the assessment."

U.S. Const. art. I § 8 The Congress shall have power

"To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;"

U.S. Const. amend. V provides inter alia that:

"[No person] shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law. . ."

5 U.S.C. § 706. (1996). Scope of review

"To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

> "**(1)** compel agency action unlawfully withheld or unreasonably delayed; and
>
> "**(2)** hold unlawful and set aside agency action, findings, and conclusions found to be—
>
> > "**(A)** arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

"**(B)** contrary to constitutional right, power, privilege, or immunity;

"**(C)** in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

"**(D)** without observance of procedure required by law;

"**(E)** unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

"**(F)** unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

"In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error."

STATEMENT OF THE CASE

This case arises from the refusal of the initial Respondent, Susan Meredith, to produce information contained in record of assessments as required by law when requested. Susan Meredith is an internal revenue service employee who Petitioner alleges has collected and is continuing to collect an unknown tax without a valid assessment. When Petitioner requested a copy of the Record of Assessment, or in the alternative to provide a Form 3050 "Certificate of Lack of Records," Respondent utterly refused to comply with the request. Respondent has consistently maintained that she does not have to produce information related to her collection activity despite established laws. Thereafter, on June 7, 2004 Petitioner filed in the United States District Court for the district of Colorado a petition in the nature of a mandamus, commanding Respondent to perform a non-discretionary ministerial duty to produce a valid record of assessment. Implementing regulations at 26 CFR § 301.6203-1(2004) as written by Congress denotes five elements of a summary record of assessment that must be disclosed to the requester;

1) Identification of the taxpayer.
2) Character of the liability assessed.
3) Taxable period.

4) Amount of the assessment.
5) Must be signed by an assessment officer.

Petitioner requested a copy of the record of assessment before initiating suit and specifically requested the character of the liability within the suit (See Petition ¶10(b)). The Respondent advanced the position without any bases in law that the Petitioner was required to specify the "ty e of tax" before the record of assessment could be disclosed (See DE#12 ¶2). The magistrate's recommendation reiterates the same position that somehow the Petitioner is obligated to specify the "type of tax" in the request for the assessment certificate (See Order DE # 58 ¶2 footnote 1). Later in the order, without any bases in law or fact and without the benefit of an evidentiary hearing, the magistrate flip flopped his position and held that the "the character of the liability assessed" was disclosed in the form 4340 (See Order DE #58 ¶5). Petitioner raised an objection to the magistrate's lack of understanding of the requirements of an assessment (See DE #68 and 69), however the objection was ignored.

A cursory examination of Form 4340 indicates a column to be used for the type of tax, however it does not disclose the type of tax that Respondent was attempting to collect, but listed instead "1040A." Petitioner is unaware of any legal authority that would list 1040A as a type of tax. A comparison of the older assessment certificate Form 23C indicates the class of tax related to the character of the liability. Form 23C lists the class's of tax as:

1) Withheld individual income and FICA
2) Individual income-other
3) Corporation income and excess profits
4) Excise
5) Estate and gift
6) Tax on carriers and their employees
7) Federal unemployment tax act

1040A is not listed as a class of tax on Form 23C, nor is 1040A listed as a class of tax anywhere in the Internal Revenue Code or implementing regulations. 1040A may be a type of tax form but never is it listed as a type of tax. Petitioner is entitled to know the class of tax the Respondent is attempting to collect

because without such knowledge the Petitioner cannot raise a legal objection to the asserted source of the erroneous tax collection. Reference to a particular tax form does not indicate the nature, kind, or source of the tax being imposed or assessed. The Petitioner is not required to presume, guess, or assume the type of tax being applied or that the tax is being properly applied.

There is no principle tax amount listed on the Form 4340, and the Respondent has failed to provide a supporting list or record. It is imperative that the penalty and interest assessments be tied back to the principle tax. In this case, Form 4340 fails to disclose the principle tax and the amount, making it impossible to calculate the appropriate interest and penalties.

Form 4340 sent by the Respondent is not signed by an assessment officer. Instead, Form 4340 is signed by a certifying officer. Delegation order 198 issued by the secretary of the treasury only allows certifying officer to certify that Form 4340 is a representation of the official record. The Petitioner alleges that the document supplied by the Respondent is not signed by an assessment officer, because it does not comply with the regulations imposed by the secretary of the treasury, and therefore it is not the actual assessment that the Petitioner has requested. The Petitioner cannot contest the lack of a signature on an assessment that is being hidden from him. Since the statutes mandate a written signature, whether the form signed is hand written or machine derived, there must be an official signature. The requirement of a signature implies that a hard copy of the document must exist, and the statutes further specify that a copy is available to the requester upon demand.

What is apparent is that no one seems to know just what an assessment really is. The Respondent did not know, the Internal Revenue Service has no idea, and the Department of Justice is totally clueless. After the Respondent was notified that Form 4340 was not an assessment the Respondent flip-flopped and produced a document titled RAC-006 (See DE #25 footnote 1) and stated that this was the assessment. Petitioner complained of this deficiency (See DE #26, 27and 28) but such complaint fell on deaf ears.

A cursory examination of the RACS 006 does not list the name of a taxpayer, nor does it show any nexus to the Petitioner or Form 4340. RACS 006 is constructed solely through the use of

statistical information on unrelated taxpayers. Neither the District Court, nor the Department of Justice has any delegated authority to state for a fact that the two are supporting lists or records. To do so would be a void assertion and cannot dispose of this case, see *U.S. v. Lovasco*, 431 U.S. 783, 97 S. Ct. 2044, 52 L. Ed. 2d 752.

Combining Form 4340 and RACS 006 together, assuming arguendo that there was a nexus, still fail to be a valid assessment as it applies to the Petitioner. Neither form 4340 nor RACS 006 combined show a taxable revenue activity or character of liability that pertains to the Petitioner. The character of the tax liability will disclose an identifiably activity involving customs, duties or excises. U.S. Const. art. I § 8 allows three types of taxes, income is the bases for determining the amount of the tax attributable to the activity. Petitioner is unaware of the type of activity i.e. customs, duties, or excises the Internal Revenue Service is attempting to collect that would create a liability. Reference to "income" or a "tax return" by itself does not establish the character of the liability. Congress has specified the nature of income tax:

> "The income tax is, therefore, not a tax on income as such. It is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce. The income is not the subject of the tax; it is the basis for determining the amount of the tax." *House Congressional Record*, 3-27-43, page 2580

The RAC 006 supplied by the Respondent is definitely an assessment. However, the RAC 006 is neither relevant nor admissible in this case because it lacks the foundation and authentication necessary to be admitted as evidence that would establish a nexus to the Petitioner. Pursuant to Fed.R.Evid Rule 901(a) and (b)(1) no testimony has been offered from a competent witness as to the identification or authentication of RAC 006. The submission of RAC 006 has not been stipulated to by the Respondent, and statements of counsel in brief or in argument are not sufficient for motion to dismiss, *United States v. Lovasco* 431 U.S. 783, 97 S. Ct. 2044, 52 L. Ed. 2d 752 (1977)

The Petitioner alleges that the original Respondent has attempted to subterfuge the assessment requirements by quoting

the case *March v. IRS,* 335 F.3d 1186 (10th Cir. 2003). The *March* case can be distinguished here because the Form 4340 reviewed by the Tenth Circuit is not evidence before the court for comparison. The name, title, or heading of a document does not establish an assessment, only the statutory and regulatory requirements that articulate the contents of a document should determine whether an assessment has been made. In this case the requirements of an assessment have not been made.

The Petitioner alleges that the Respondent has a duty to disclose a procedurally correct assessment. The secretary has not changed the regulations from the time the 23C was considered a valid assessment till the present time. The Petitioner further alleges Respondent is relying on secret law to provide a substitute, abbreviated, and incomplete assessment, since no statutory authority was conferred per 26 USC § 6203 and 26 CFR § 301.6203-1 (2004) to provide a substitute certificate, abbreviated, or incomplete assessment. The court quoted "secret law is an abomination," in *Hawkws v. IRS,* 467 F.2d 787 (1972). Case law further established that purpose of requiring disclosure of "policies, statements or interpretations of law...is to prevent bodies of 'secret law' from being built up," *Schwartz v. IRS,* 511 F.2d 1303, 1305 (D.C. Cir. 1975).

RREASONS FOR GRANTING THE PETITION

I. The Petitioner alleges the District Court, Tenth, First, and Eleventh Circuit Courts errored in finding the Congressional mandate of Title 26 U.S.C. § 6203 and regulations promulgated by the Secretary of the Treasury of Title 26 CFR §301.6203-1 invalid in contradiction to the decisions of the Third, Fifth, Sixth, Seventh, Eighth, and Ninth Circuit Courts.

Congress recognized the importance of procedurally correct summary record of assessment for the collection of specific types of tax. As a bulwark against tyranny by the Internal Revenue Service the provisions of Title 26 U.S.C. § 6203 and Title 26 CFR §301.6203-1 established five specific elements necessary for a valid summary record of assessment. To determine the first

question presented and resolve the widespread conflict among the circuits on this important question it is necessary to determine if summary record of assessment presented in this case is consistent with congressional intent and regulations promulgated by the Secretary of the Treasury.

A. Conflicts between the Courts of Appeal.

The cases of *March v. IRS*, 335 F.3d 1186 (10th Cir. 2003) and *Roberts v. Comm. of IRS*, 329 F.3d 1224 (11th Cir. 2003) cited by the Respondent as correct, appears to conflict with the following cases from other United States Court of Appeals;

In *Robinson v. United States*, 920 F.2d 1157, 1158 (3rd Cir.1990), the court described the assessment process as:

> "A duly designated official for the district or regional tax center signs the summary record of the assessment, which identifies the taxpayers, the type of tax owed, the taxable period and the amount of the assessment. 26 U.S.C. § 6203; Treas. Reg. § 301.6203-1."

In *Stallard v. U.S.*, 12 F.3d 489, 493 (5th Cir.1994) the court reaffirmed Brafman stating;

> "We held in Brafman that the "assessment certificate" must be timely signed by the appropriate official; but the certificate we were referring to in that opinion was the summary record of assessment named in § 301.6203-1. That holding is consistent with § 301.6203-1, which provides that "the assessment shall be made by an assessment officer signing the "*summary record*" and "[t]he date of assessment is the date the *summary record* is signed by an assessment officer."

In *Gentry v. U.S.*, 962 F.2d 555, 558 (6th Cir. 1992) the court held;

> "The Treasury Regulations specify that the taxpayer is entitled to a copy of the pertinent parts of the assessment

> documents. Those pertinent parts need only provide the five items listed in the Regualations. See 26 C.F.R. § 301.6203-1 (requiring the taxpayer's name, date of assessment, character of liability, tax period if applicable, and amounts assessed). * * * [S]ignature of assessment officer on summary record is required to validate that form and to verify that the assessments were correctly made, based upon original supporting documents."

In *Planned Investments, Inc. v. United States,* 881 F.2d 340, 343 (6th Cir. 1989), the court examined the requirements of 26 C.F.R., §301.6203-1, and stated:

> "Section 6203 of Subchapter A provides that assessment be made by recording the liability in accordance with the regulations promulgated by the Secretary. 26 U.S.C. § 6203 ... Treasury regulations provide that the assessment be made by signing the summary record of assessment. 26 CFR § 301.6203-1. The summary record, through supporting documents, must contain the following:
>
> 1) identification of the taxpayer;
> 2) character of liability assessed;
> 3) taxable period, if applicable; and
> 4) amount of assessment

In *United States v. Miller*, 318 F.2d 637, 638-39 (7th Cir. 1963);

> "We think it clear that the term "assessment" referred to in this section of the Internal Revenue Code of 1954 has a technical meaning spelled out in the Code and that meaning is binding on this court."[2]

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[2] 26 U.S.C. 1958 ed. § 6203 reads in part:

§ 6203. Method of assessment

"The assessment shall be made *by recording the liability of the taxpayer in the office of the Secretary of his delegate in accordance with rules or regulations prescribed the Secretary or his delegate* in accordance with rules or regulations prescribed by the Secretary or his delegate. * * * " (Emphasis supplied.)

In *Essex v. Vinal,* 499 F2d. 226, 230 (8th Cir. 1974) the Court reaffirmed Treasury Regulation § 301.6203-1 the court stated;

> "[t]hese assessments made were void because Treas. Reg. § 301.6203.1 (1961) was not complied with. Int.Rev.Code of 1954, § 6302 specifies that an assessment shall be made by recording the liability of the taxpayer in the office of the Secretary of his delegate in accordance with rules or regulations prescribed the Secretary or his delegate.
>
> Treasury Regulation § 301.6203-1, provides in pertinent part: *Method of Assessment.* - The district director and the director of the regional service center shall appoint one or more assessment officers. The district director shall also appoint assessment officers in a Service Center servicing his district. *The assessment shall be made by an assessment officer signing the summary record of assessment.*" (Emphasis supplied.)

In *Brafman v. United States*, 384 F.2d 863, 865-866 (9th Cir.1967) the court reaffirmed Treas. Reg. § 301.6203 the court stated;

> "Since the certificate lacks the requisite signature, it cannot constitute a valid assessment."

In the published opinions of *Arford v. U.S.*, 934 F.2d 229, 232, (9th Cir. 1991) and *Koff v. U.S.*, 3 F.3d 1297, 1300, (9th Cir. 1992) the courts stated;

> "Section 6203 provides (1) that assessments must be made in accordance with rules and regulations prescribed by the

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Treasury Regulation § 301.6203-1, as amended, T.D. 6585, 1962-1 , Cum.Bull 290, reads in part:

"Sec. 301.6203-1 Method of Assessment.

"The district director and the director of the regional service center shall appoint one or more assessment officers. The district director shall also appoint assessment officers in a Service Center servicing his district. The assessment shall be made by an assessment officer signing the summary record of assessment. * * * *The date of the assessment is the date the summary record is signed by an assessment officer.* * * *" (Emphasis supplied.)

> Secretary, and (2) that "a copy of the record of the assessment must be given the taxpayer upon request."

In *United States v. Coson,* 286 F.2d 453, 465 (9th Cir. 1961) the circuit court upheld the district court's decision stating that;

> "it would appear that the trial court was right in holding the assessment insufficient for failure to comply with the statutory requirements."

B. Conflicts relating to Form 4340 within Courts of Appeal.

The following cases show the lack of understanding and consensus as to the function and statutory requirements relating to the Form 4340 "Certificate of Assessments and Payments":

The decision of *United States v. Chila,* 871 F.2d 1015, 1017-18 (11th Cir.1989) is distinguished in that the decision appears to conflicting with the law and regulation stating;

> "The requirement by the regulation that the government provide "the pertinent parts of the assessment" is satisfied by providing any part of the records of the government that supplies the "pertinent information" that both regulation and statute require."

Contradict their own decision the Court further stated;

> "Accordingly, this Court accepts the document "Certificate of Assessments and Payments" submitted by the government as presumptive proof of a valid assessment."

The decision of *Geiselman v. United States,* 961 F.2d 1, 5-6 (1st Cir.1992) appears to contradict law and regulation is similarly distinguished, in citing from *Rocovich*;

> "Under 26 U.S.C. § 6203, an assessment is made "by recording the liability of the taxpayer in the office of the Secretary." In practice, the IRS makes assessments by

> having an assessment officer fill out and sign a "summary record of assessment," also known as a Form 23C. In this case the government did not provide the district court with an actual Form 23C, but it did submit several Certificates of Assessments and Payments (Form 4340) which listed the "23C date" (the date the assessment officer signed the Form 23C) for the initial assessments made against Michael for each tax year in which he failed to file a return, and for each subsequent assessment of interest on the underlying tax liability." * * * * "Certificates of Assessments and Payments are "routinely used to prove that tax assessment has in fact been made." *Rocovich v. United States*, 933 F.2d 991, 994 (Fed, Cir. 1991). They are "presumptive proof of a valid assessment"

In *United States v. Miller*, 318 F.2d 637, 638-39 (7th Cir. 1963);

> "The district court properly considered the copy of the official copy of the official Certificate of Assessments and Payments submitted by the Government in ruling on the motion for summary judgment."

In the preceding cases *Chila, Geiselman, Rocovich, and Miller,* supra, it appears that nothing in the record established if the five specific elements pursuant to 26 CFR § 301.6203-1 necessary for a valid summary record of assessment were present. There appears that no discussion presented with regard to the supporting documentation of the Certificate of Assessments and Payments. Where, as here, supporting documentation for a party's position does not exist, there must be a point at which "presumption" can no longer be relied upon to sanction Respondent's arbitrary and abusive denial of the procedural due process rights conferred upon taxpayers by Congress. If Respondent merely has to generate a "Certificate of Assessments and Payments" to carry its burden and is not required to follow the congressional mandates of the applicable statutes, the potential for abuse becomes unlimited.

In the context of a presumption of correctness as to the amount of assessment, several federal courts have identified the

general rule that the presumption does not arise unless it is supported by some evidentiary foundation. *Weimerskirsh v. Commissioner,* 596 F.2d 358, 361 (9th Cir. 1979); *Carson v. U.S.* 560 F.2d 693, 696-97 (5th Cir. 1977); *Coleman v. U.S.,* 704 F.2d 326 (6th Cir. 1983); and *U.S. v. Lochamy*, 724 F.2d 494, 498 (5th Cir. 1984).

The inherent unreliability of the Certificate of Assessments and Payments as it relates to assessments was addressed in *Huff v. United States*, 10 F.3d 1440, 1445-46 (9th Cir. 1993);

> "Generally, courts have held that IRS Form 4340 provides at least presumptive evidence that a tax has been validly assessed under § 6203. See *Farr,* F.2d at 454; *Geiselman v. United States,* 961F.2d F. 1, 5-6 (1st Cir.), cert denied, - U.S.- , 113 S.Ct. 261, 121 L.Ed.2d 191 (1992); *Rocovich v. United States,* 933 F.2d 991, 994 (Fed. Cir. 1991) ("Certificates of Assessments and Payments [are] routinely used to prove that a tax assessment has in fact been made."); *United States v. Chila,* 871 F.2d 1015, 1017-18 (11th Cir.1989), cert denied, 493 U.S. 975, 110 S.Ct. 498, 107 L.Ed.2d 637, 638-39 (1989) *United States v. Miller*, 318 F.2d 637, 638-39, (7th Cir. 1963). Here, however, the IRS seeks to rely solely on these forms to prove not only that an assessment had been validly made, but that the taxpayer had been provided with a copy of the assessment as per *Treasury Regulation § 301.6203-1.* ***We are unaware of any authority indicating that these forms standing alone constitute evidence for the latter proposition. Indeed, no entry on the form contains any information in this regard.***" (Emphasis added)

In *Stallard v. U.S.*, 12 F.3d 489, 493 (5th Cir.1994) the court appears to have identified the Form 4340 as merely a support document and all provisions must be met stating;

> "If the summary record is properly supported through a Form 4340, the assessment contained in that summary record is considered presumptively valid; the taxpayer

> must produce evidence to the contrary to rebut this presumption." * * * * "The district court concluded that our opinion is Brafman v. United States requires that *all* provisions of Treasury Regulation § 301.6203-1 must be met within the limitation period."

Referring particularly to the language of the court's opinion in *Portillo v. C.I.R.*, 988 F.2d 27, 29 (5th Cir. 1993);

> "[*U*]*nited States v. Janis* 428 U.S. 433, 96 S.Ct. 3021, 49 L.Ed.2d 1046 (1976). Janis holds that where "the assessment is shown to be naked and without any foundation," it is not entitled to the presumption of correctness ordinarily conferred upon a notice of tax deficiency. The inception of this holding is found in *Helvering v. Taylor,* 293 U.S. 507, 55 S.Ct. 287, 79 L.Ed. 623, a case which was decided in 1935!"

A split exists in the Circuit Courts with respect to the issue of whether the Congressional mandate of 26 U.S.C. § 6203 and regulations promulgated by the Secretary of the Treasury Title 26 CFR § 301.6203-1 are valid. This leaves profound confusion for future interpretation on this issue by any Federal Court.

It has been well established in this Court that Certiorari should be granted where there is a clash of opinions between Courts of Appeals preventing a uniform course of decision made on the same question. *Universal Camera Corp. v. NLRB,* 340 U.S. 474, 71 S. Ct. 456, 95 L. Ed. 456 (1951); *Rice v. Sioux City Memorial Park Cemetery Co., Inc.,* 349 U.S. 70, 75 S. Ct. 614, 99 L. Ed. 897 (1955); *Goldlawr, Inc v. Heiman,* 369 U.S. 463, 82 S. Ct. 913, 8 L. Ed. 2d 39 (1962).

Sup. Ct. R. 10(a) indicates that among the reasons the Court considers in granting a writ of certiorari is when a United States Court of Appeals has entered a decision in conflict with decisions of another United States Court of Appeals on the same important matter.

The conflict that now exists between the Tenth, First, and Eleventh Circuit Courts and the Third, Fifth, Sixth, Seventh,

Eighth, and Ninth Circuit Courts creates a situation that calls for this Court to resolve the conflict. The administration of income taxes is of public importance in order that there would be uniform application nationwide of 26 U.S.C. § 6203 and 26 CFR § 301.6203-1. Without such clarification and uniformity, thousands of people occupying several circuits, as well as people nationwide, are subjected to the arbitrary application of unsigned and unverified computer generated assessment forms. Creating a liability where none exists, collecting money, and confiscating property without due process from the public at large by such means creates a serious abuse of power that a bureaucracy might generate. It is therefore respectfully requested that this Court grant the Petition for Writ of Certiorari to resolve the conflict between Courts of Appeal.

II. The Petitioner alleges the judicial proceedings of the District Court sanctioned by the Tenth Circuit Court have decided federal questions in a way that appears to conflict with applicable decisions of this Court and have so far departed from the accepted and usual course of judicial proceedings as to call of an exercise of this Court's power of supervision.

The second question presented addresses the issue of the lower court exceeding the proper scope of judicial review by substituting its judgment concerning the application of the statutory standard of conduct and the framing relief appropriate for that of the agency charged with the administration of the summary record of assessment. The United States District Court's actions sanctioned by the Tenth Circuit Court conflicts with this Court's authority appears to demonstrate a "departure" from "the usual course of judicial proceedings," but so too does disregard of the requirements of the Federal Judicial Code, or the Federal Rules of Civil Procedure, or Evidence which potentially warrant an exercise of the Court's "supervisory power,"

A. Judicial proceedings appears to conflict with this Court's prior holdings in *Hawaii v. Gordon*, *Land v. Dollar*, *Dugan v. Rank*, *Larson v. Domestic, Foreign Commerce Corp.*, *Washington Legal Found. v. U. S. Sentencing Comm'n*, and

***North Carolina v. Temple* stating that the United States was not the proper party.**

The Petitioner alleges that the Federal District Courts have a duty to act within the mandates defined by United States Statute conferring their power. The District Court's order to substitute the United States for Susan Meredith, as the party Respondent was erroneous and goes against the plain meaning of the mandamus statute. The Petitioner filed a Motion and Memorandum in opposition to Respondent's Motion to alter/amend caption, but said motion fell on deaf ears.

The Respondent argues that the United States has not waived sovereign immunity unless a statutory waiver can identify this action, and that the case should be dismissed for lack of subject matter jurisdiction (See DE #12). In determining the scope of immunity, the trial court must look at the relief sought and not just the caption of the parties. *Larson v. Domestic and Foreign Commerce Corp.*, infra. 337 U.S. 682 (1947). This Court has issued not less than six instances where sovereign immunity could be waived in specific narrow instances based upon relief sought and where there is no statutory waiver.

In determining whether the sovereign is a dispensable party the court must first reason if the relief sought would operate against the sovereign. If the relief sought were not adverse to the sovereign, then the sovereign would not be a proper party. *Hawaii v. Gordon*, 373 U.S. 57 (1963). Similarly, if any judgment prayed for would not expend itself on the public treasury or domain, or interfere with the public administration of the sovereign, the sovereign would not be a proper party. *Land v. Dollar*, 330 U.S. 731 (1947). See also: *Dugan v. Rank*, 372 U.S. 609 (1963). There is another waiver of sovereign immunity under the theory of ultra vires, which does not require a statutory waiver. In *Larson v. Domestic and Foreign Commerce Corp.*, 337 U.S. 682 (1947), the Supreme Court held that:

> "[A] government officer in his official capacity was not a suit against the sovereign, and hence not subject to defeat by the doctrine of sovereign immunity, only if (1) the officer's powers are limited by statute and his actions were

> ultra vires, or (2) the officer was acting unconstitutionally or pursuant to an unconstitutional grant of power from the sovereign."

Both the *Larson* and *Dugan* cases are collectively known as the Larson – Dugan exception to sovereign immunity. In a 1996 decision, then Circuit Judge Ginsburg invoked the Larson – Dugan exception in *Washington Legal Found. v. United States Sentencing Comm'n*, 89 F.3d 897 (DC Cir. 1996) stating that: "If a plaintiff seeks a writ of mandamus to force a public official to perform a duty imposed upon him in his official capacity ... no separate waiver of sovereign immunity is needed." Id at 901. The original Respondent, Susan Meredith, lacks the power to deny the production of an assessment, and the refusal to produce is in contempt of Congress and Secretary of the Treasury's regulations. The Petitioner relies on *Simmat v. U.S. Bureau of Prisons*, 413 F.3d 1225, 1234 (10th Cir. 2005):

> "The district court also had jurisdiction under 28 U.S.C. § 1361, which provides: The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."
>
> "Mandamus is the traditional writ designed to compel government officers to perform nondiscretionary duties. *See Marbury v. Madison,* 5 U.S. (1 Cranch) 137, 168-69, 2 L.Ed. 60 (1803). Significantly, application of the mandamus remedy to require a public official to perform a duty imposed upon him in his official capacity is not limited by sovereign immunity. In *Houston v. Onnes,* the Court held that suits to compel federal officers " 'to perform some ministerial duty imposed upon them by law, and which they wrongfully neglect or refuse to perform ... would not be deemed suits against the United States within the rule that the Government cannot be sued except by its consent.' " 252 U.S. 469, 472-73, 40 S.Ct. 369, 64 L.Ed. 667 (1920) (quoting *Minnesota v. Hitchcock,* 185 U.S. 373, 386, 22 S.Ct. 650, 46 L.Ed. 954 (1902)); *see also,*

> *e.g., Roberts v. United States ex rel. Valentine,* 176 U.S. 221, 20 S.Ct. 376, 44 L.Ed. 443 (1900) (granting mandamus against the United States Treasurer); *Washington Legal Foundation v. U.S. Sentencing Comrn,'n,* 89 F.3d 897, 901 (D.C.Cir.1996)." (*emphasis added*)

The ultra vires exception to sovereign immunity was articulated in the Ninth circuit in *Washington v. Udall*, 417 F.2d 1310 (9th Cir. 1969). In *Udall*, the State of Washington sought relief on the failure of federal officials to perform their actions based on statutory requirements. The *Udall* court held that the doctrine of sovereign immunity does not preclude all suits, based on unconstitutional or ultra vires acts of federal officials, for affirmative relief or for the disposition of property of the United States. Only when the relief sought places an intolerable burden on governmental functions, the doctrine of sovereign immunity applies.

Federal Tax Court has affirmed Udall in *Gealer, ET AL. v. U.S., ET AL.*, 82 AFTR 2d 98-5669, 98-5677 (1998):

> "7. The Ultra Vires Exception
> Petitioner next claims that sovereign immunity is waived under the doctrine of ultra vires. The Ninth Circuit in *Washington v. Udall* observed that certain suits against a government officer acting in an official capacity were not "suits against the sovereign ... only if (1) the officer's powers are limited by statute and his actions were ultra vires, or (2) the officer was acting unconstitutionally or pursuant to an unconstitutional grant of power from the sovereign." *Udall*, 417 F.2d at 1314; cf. *Westside Property Owners v. Schlesinger,* 597 F.2d 1214, 1219 (9th Cir. 1979) (noting a limitation on the ultra vires exception, namely that the doctrine of sovereign immunity "may be controlling in some suits ...where the relief sought would work an intolerable burden on government functions, outweighing any consideration of private harm") (citation omitted)."

This Court also added one of two express exceptions to the ultra vires waiver of sovereign immunity: "if the relief requested can not be granted by merely ordering the cessation of the conduct complained of but will require affirmative action by the sovereign or the disposition of unquestionable sovereign property then the suit may fail." *North Carolina v. Temple*, 134 U.S. 22 (1890).

This Court in *Larson*, supra, articulated a question similar to the facts in the present case. "[If the] suit is not one for damages but for specific relief: i.e., ...injunction directing the defendant officer's actions. In each such case the question is directly posed as to whether, by obtaining relief against the officer, relief will not, in effect, be obtained against the sovereign." Id at 688. The United States as the sovereign in this case is not burdened by the relief sought, but actually demands the Respondent comply by both Congressional mandates of Title 26 U.S.C. § 6203 and regulations promulgated by the Secretary of the Treasury of Title 26 CFR § 301.6203-1.

In this case, Congress and the Secretary of the Treasury have imposed a mandatory, and non-discretionary duty on the Respondent to provide specific documents upon request. This request is not an intolerable burden on the sovereign, because the sovereign has already mandated that the Respondent must comply with a request for assessment certificates, or the related documents. A judgment issued by the lower court would not have expended itself on the public treasury, or public domain of the United States, because the Petitioner has not claimed any damages that would require a statutory waiver. *Clark v. United States*, 691 F.2d 837 (7th Cir. 1982) supra. Moreover, any relief sought will not in any way interfere with public administration, or any government functions of the United States.

Under the ultra vires waiver of sovereign immunity, the Respondent is a revenue employee. Respondent's authority, pursuant to Title 31 CFR Part 1, §2 Appendix B of Subpart C does not allow the Respondent to forbid the Petitioner the right to a copy of the assessment certificates or related documents. "[An] officer is not doing the business which the sovereign has empowered him to do or he is doing it in a way which the sovereign has forbidden. His actions are ultra vires his authority

and therefore may be made the object of specific relief." *Larson*, supra. Id at 689.

The two exceptions to the ultra vires waiver do not apply to this case. A judgment will not require an affirmative action by the sovereign nor does this action involve the disposition of property. As articulated in the petition, Congress has allowed access to information from the employee that is seeking collection of assumed tax liabilities pursuant to 31 CFR Part 1, § 2 Appendix B of Subpart C.

In compliance with 31 CFR Part 1, §2 Appendix B of Subpart C Petitioner sought proof of claim i.e. Record of Assessments from the individual effecting the collection of tax liabilities, which in this case is the Respondent. The mandamus statute clearly states that the mandamus directs an officer or employee of the United States, or an agency thereof to perform a duty owed to a plaintiff. Although the United States of America is an agency of the United States it lacks the Sovereign Immunity that the United States can claim. Moreover, by substituting an agency in place of an employee the sovereign immunity issue of the United States is moot.

Respondent's frivolous argument that there must be an expressed statutory waiver of sovereign immunity by quoting authorities where parties sought claims against the sovereign is a blatant attempt to shift focus from the content of the allegations. Respondent's actions are in contempt of Congress and insubordination to the Secretary of the Treasury. The United States as a sovereign is not a proper party to the action, because the Respondent is confusing its supporting cases with the assumption that the United States with its agency the United States.

B. Judicial proceedings appears to conflict with this Court's prior holdings in *Adicks v. S.H. Kress Co.*, and *U.S. v. Lovasco, Gonzales v. Buist, Holt v. United States, Telephone Cases,* and failing to show as matter of law the entitlement to summary judgment disposition beyond a reasonable doubt.

The Petitioner alleges that by virtue of the magistrate's position and oath of office, magistrates and judges owe a duty to get just results. The Petitioner alleges that the magistrate's

recommendation on the subject of the summary judgment issue was nothing more than quoted court cases regarding burden of proof. Nothing in the recommendation ties the listed court cases to the facts in the case. The law on summary judgment is well settled, a summary judgment may not be granted when a genuine issue of material fact is presented to the trial court, *Adicks v. S.H. Kress Co.*, 398 U.S. 144, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970). As a matter of law the movant must show entitlement to summary judgment disposition beyond a reasonable doubt, *Norton v. Liddel*, 620 F. 2d 1375, 1381 (10th Cir. 1980). The main premise for Respondent's motion to dismiss is on the assumption that Form 4340 contains all the elements that the regulations require to be disclosed per 26 C.F.R. § 301.6203-1.

The Petitioner alleges that there is a triable issue of fact here as to whether the Secretary's mandates have been followed. There are no presumptions that the Petitioner has to rebut per Fed.R.Evid. Rule 301. The documents and information the Respondent is required to produce are not in the record, nor have they ever been produced – period. The burden of persuasion rests on the Respondent to prove by evidence that all of the requirements have been met, Respondent has failed to prove as a matter of law they are entitled to summary judgment or dismissal.

Three issues of the assessment have been withheld from the Petitioner, the principal tax amount, the character of the liability, and a copy of the assessment signed by an assessment officer establishing the date of the assessment. One of the requirements for summary judgment is a bona fide affidavit from the Respondent in the case per Fed. R. Civ. Pro. Rule 56(e). The magistrates stated that counsel had provided an affidavit that satisfied the summary judgment requirement (See DE #58 pg.2). Petitioner contends that the counsel for the Respondent is not a party to the case and her affidavit is not evidence before the court that satisfy the summary judgment requirement. The Petitioner relies on *United States v. Lovasco* 431 U.S. 783, 97 S. Ct. 2044, 52 L. Ed. 2d 752 (1977); *Gonzales v. Buist*, 224 U.S. 126, 56 L. Ed. 693, 32 S. Ct. 463 (1912); *Holt v. United States*, 218 U.S. 245, 54 L. Ed. 1021, 31 S. Ct. 2 (1910); see also; *Telephone Cases*, 126 U.S. 1, 31 L. Ed. 863, 8 S. Ct. 778 for this contingent.

C. Judicial proceedings appears to conflict with this Court's prior holdings in *Lynch v. Household Finance Corp.*, *Matthews v. Eldridge*, and *Arnstrong v. Monzo*, denying the Petitioner 5th amendment due process of an evidentiary hearing

The Petitioner alleges that by virtue of the magistrate's position and oath of office, magistrates and judges owe a duty to act within the limitations of the Constitution of the United States and to perform their undertaking with the ordinary care and competence reasonably expected of members of their profession in the community.

The Petitioner requested an Evidentiary Hearing (See DE #64 and 65) in order to ascertain if the all elements of the assessment had been produced – such request was denied without cause. The Petitioner alleges the district court failed to uphold the Constitution as they are sworn to do and protect the fundamental rights to due process as guaranteed by the U.S. Const. amend. V.

This Court has repeatedly affirmed the right to be heard and the right due process. See *Lynch v. Household Finance Corp.*, 405 U.S. 538, 552 (1972):

> "The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment -- to minimize substantively unfair or mistaken deprivations of property, a danger that is especially great when the State seizes goods simply upon the application of and for the benefit of a private party. So viewed, the prohibition against the deprivation of property without due process of law reflects the high value, embedded in our constitutional and political history, that we place on a person's right to enjoy what is his, free of governmental interference."

Also see *Matthews v. Eldridge*, 424 US 319, 332-33 (1976) and *Arnstrong v. Monzo*, 380 US 545, 550-52 (1965):

1) Due process requires as general matter opportunity to be heard at meaningful time and in a meaningful manner.
2) Citizens must be afforded due process before deprivation of life, liberty or property.

It appears the Tenth Circuit has contradicted its own ruling of *U.S. v. Deters*, 143 F.3d 577 (10th Cir. 1998) stating:

> "When government action deprives a person of life, liberty or property without fair procedures, it violates procedural due process."

It has been well established in this Court that Certiorari should be granted where a court of appeals decision "appears" to conflict with this Court's precedent. *United States v. Doe* 465 U.S. 605, 610 (1984) "to resolve the apparent conflict between the Court of Appeals holding and the reasoning underling this Court's holding" *Lugar v. Edmonson Oil Co.*, 457 U.S. 922, 926 (1982). And where the court of appeals deliberately refuses to follow the applicable Supreme Court decisions *Rodriguez De Quijas v. Sheason/American Express, Inc.*, 490 U.S. 477 (1989).

Sup. Ct. R. 10(c) indicates that among the reasons the Court considers in granting a writ of certiorari is when a United States court of appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court.

It appears that *McNabb v. United States*, 318 U.S. 332, 340 (1943) is this Court's first recognition of its supervisory power over lower federal court proceedings. See also *Mallory v. United States*, 354 U.S. 449 (1957); *Elkins v. United States*, 364 U.S. 206 (1960); *Unites States v. Hale*, 422 U.S. 171, 181 (1975); *Hobby v. United States*, 486 U.S. 399 (1984); and *Florida v. Rodriguez*, 469 U.S. 1,7 (1984).

Sup. Ct. R. 10(c) further indicates that among the reasons the Court considers in granting a writ of certiorari is when a United States court of appeals has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such a

course by a lower court, as to call of an exercise of this Court's power of supervision.

It appears that Sup. Ct. R. 10(c) implies a duty of establishing and maintaining "standards of procedure and evidence." In light of what appears to be the District Court's direct refusal to adhere to the accepted and usual course of judicial proceedings, and the Tenth Circuit's failure to conform its decision to this Court's relevant teachings, plenary review is warranted to maintain public confidence in the integrity of the judiciary.

III. The Petitioner alleges the decisions of the District Court, Tenth, First, and Eleventh Circuit Courts have decided an important issue involving the administration of income tax laws, finding the Congressional mandate of Title 5 U.S.C. § 706 invalid, in a way that appears to conflict with this Court's prior holdings.

A. The District Court decision sanction by Tenth Circuit appears to conflict with this Court's prior holdings.

The legislature has directed the Internal Revenue Service to act in a particular manner, set out in specific standards of conduct required for a valid assessment. Despite the instigation of computer generated forms, the statute has not changed requiring the pertinent parts of the "Record of the Assessment" articulated in 26 CFR § 301.6203-1 (2004). The secretary has not changed the regulations from the time when the 23C was considered a valid assessment till the present time.

The Petitioner alleges that no statutory authority was conferred per 26 U.S.C. § 6203 or 26 CFR 301.6203-1 to provide a substitute certificate, abbreviated, or unsigned assessment.

The Petitioner further alleges that no statutory authority was conferred to create a character of the liability, i.e. Form 1040, not identified by U.S. Const. art. I § 8 **Power of Congress.**

This Court has long recognized that the primary rule of statutory construction is to ascertain and give effect to the plain meaning of statutory language. The Petitioner relies on the following mandatory authorities of this Court;

In *Morrill v. Jones,* 106 U.S. 466, 467 (1882) Mr. Chief Justice Waite, after stating the case, delivered the opinion of the court;

> "The Secretary of the Treasury cannot by his regulations alter or amend the revenue law. All he can do is to regulate the mode of proceeding to carry into effect what Congress has enacted."

In *Gould v. Gould,* 245 U.S. 151, 153 (1917) this Court held;

> "In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government, and in favor of the citizen,"

U.S. v. Morton Salt Co., 338 U.S. 632, 644 (1950).

> "The Administrative Procedures Act was framed against the background of rapid expansion of the administrative process was a check upon administrative whose zeal might otherwise have carried them to excesses not contemplated in legislation created their offices. It created safeguards even narrower than the constitutional ones, against arbitrary official encroachment on private rights.
>
> Thus § 3(a) of the Act requires every agency to which it applies, which includes the Federal Trade Commission, to publish in the Federal Register certain statements of its rules, organization and procedure, "including the nature and requirements of all formal or procedures available," and adds that, "No person shall in any manner be required to resort to organization or procedure not so published." In addition § 6(b) proscribes any requirement of a report or other investigative demand "in any manner or for any purpose except as authorized by law."

In *Chevron, U.S.A., Inc v. Natural Resources Defense,* 467 U.S. 837, 842-43 (1984) this Court ruled;

> "When a court reviews an agency's construction of the statue which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." [9]

In *Louisiana Public Service Com'n v. F.C.C.,* 476 U.S. 355, 374-75 (1986) this Court held;

> "Agency may not confer power upon itself. To permit an agency to expand its power in the face of congressional limitation on its jurisdiction would be to grant to the agency power to override Congress. This we are both unwilling and unable to do."

In *Lyng v. Payne,* 106 S.Ct 2333, 2341, 476 U.S. 926, 90 L.Ed 921 (1986) this Court stated;

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[9] The judiciary is the final authority on issues of statutory constructions which are contrary to clear congressional intent. See, e.g., *FEC v. Democratic Senatorial Campaign Committee,* 454 U.S. 27, 32, 102 S.Ct. 38, 42, 70 L.Ed.2d 23 (1981); *SEC v. Sloan,* 436 U.S. 103, 117-118, 98 S.Ct. 1702, 1711-1712, 56 L.Ed.2d 148 (1978); *FMC v. Seatrain Lines, Inc.,* 411 U.S. 726, 745-746, 93 S.Ct. 1773, 1784-1785, 36 L.Ed.2d 620 (1973); *Volkswagen v. FMC,* 390 U.S. 261, 272, 88 S.Ct. 929, 935, 19 L.Ed.2d 1090 (1968); *NLRB v. Brown,* 380 U.S. 278, 291, 85 S.Ct. 980 988, 13 L.Ed.2d 839 (1965); *FTC v. Colgate-Palmolive Co.,* 380 U.S. 374, 385, 85 S.Ct. 637, 643, 90 L.Ed. 904 (1965); *Social Security Board v. Nierotko,* 327 U.S. 358, 369, 66 S.Ct. 637, 643, 90 L.Ed. 718 (1946); *Burnet v. Chicago Portrait Co.,* 285 U.S. 1, 16, 52 S.Ct 275, 281, 76 L.Ed. 587 (1932); *Webster v. Luther,* 163 U.S. 331, 342, 16 S.Ct. 963, 967, 41 L.Ed. 179 (1896). If a court, employing traditional tools of statutory construction, ascertains that Congress had an intention on the precise question at issue, that intention is the law and must be given effect.

> "Second, an agency's power is no greater than that delegated to it by Congress."

Ragsdale v. Wolverine World Wide, Inc., 535 U.S. 81, 91 (2002);

> "Regardless of how serious the problem an administrative agency seeks to address, it may not exercise its authority in

The Petitioner alleges that the substitute, abbreviated, and unsigned Form 4340 and RACS-006 conflict with the "arbitrary, capricious, abuse of discretion, otherwise not in accordance with law" or failed to meet statutory, procedural, or constitutional requirements. 5 U.S.C. §§ 706 (2)(A),(C),(D) (1996).

This Court has defined the arbitrary and capricious standard following cases: *FCC V. National Citizens Comm. for Broadcasting,* 436 U.S. 775, 803 (1978) and *Citizens to Preserve Overton, Park v. Volpe*, 401 U.S. 402, 413-414 (1971)

> "But the existence of judicial review is only the start: the standard for review must also be determined. For that we must look to § 706 of the Administrative Procedure Act, 5 U.S.C. § 706 (1964 ed., Supp. V), which provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found" not to meet six separate standards.[30]

B. Intracircuit conflict within the Tenth Circuit Court.

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[30] In all cases agency action must be set aside if the action was "arbitrary, capricious, an abuse of discretion, to otherwise not in accordance with law" or if the action failed to meet statutory, procedural, or constitutional requirements. 5 U.S.C. §§ 706 (2)(A), (B), (C), (D) (1964 ed., Supp. V). In certain narrow, specifically limited situations. The agency action is to be set aside if the action was not supported by "substantial evidence." And in other equally narrow circumstances the reviewing court is to engage in a de novo review of the action and set it aside if it was "unwarranted by the facts." 5 U.S.C.A. §§ 706 (2)(E), (F), (1964 ed., Supp. V)."

The widespread conflict among the circuits is accompanied by intracircuit within the Tenth Circuit Court. The Tenth Circuit decision appears to be a direct departure from its own previous application of this Court's rulings.

Neither Form 4340 nor RACS-006 combined which were presented to the District Court, show a taxable revenue activity or character of liability that pertains to the Petitioner. The character of the tax liability will be the disclosure of an identifiably activity involving customs, duties or excises, identified with U.S. Const. art. I § 8. Yet the Respondent would have the court believe that Form 1040 shown on Form 4330 is the character of the liability.

The Petitioner contends that Form 1040 cannot be the character of the liability when both the Tenth Circuit in a previous ruling and this Court have determined that "tax forms are information collection request" under the *Paperwork Reduction Act, Dole v. United Steel workers*, 494 U.S. 26, 110 S. Ct. 929, 932-33, 108 L. Ed.2d 23 (1990); *United States v. Collins,* 920 F.2d 619, 630 & n. 13 (10th Cir. 1990 (dictum));

> "the 1040 form is the information collection request which arguably must comply with the PRA. It is through the 1040 form that the government obtains all of the tax information it requires,.." *U.S. v. Dawes,* 951 F.2d 1189 (10th Cir. 1991)

It appears there is another Tenth Circuit intracircuit conflict relating to an agency acting in excess of the intent of Congress in *Home Mortg. Bank v. Ryan,* 986 F.2d 372, 376 (10th Cir. 1993) quoting from *Chevron.* supra;

> "If congress has directly spoken to issue addressed by regulation and its intent is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress."

It has also been well established in this Court that Certiorari should be granted when the intracircuit conflict relates to a recurring and important issue or is accompanied by a "widespread conflict among the circuits," *Commissioner v. Estate*

of Bosch, 387 U.S. 456, 457 (1967); *John Hancock Ins. Co. v. Bartels,* 308 U.S. 180, 181 (1939); *Dickinson v. Petroleum Conversion Corp.,* 338 U.S. 507, 508 (1950); and *Scarborough v. United States,* 431 U.S. 563, 567 n.4 (1977).

The Petitioner contends that the practice of an administrative agency acting without Congressional authority, threatens to develop a fourth branch of government for which there is no sanction in the Constitution. It has been well established in this Court that Certiorari should be granted to review the exercise of the grave power of annulling an Act of Congress *United States v. Butler,* 297 U.S.1 (1936) and *United States v. Gainey,* 380 U.S. 63,65 (1965).

The Tenth Circuit's failure to conform its judgment to this Court's relevant teachings constitutes a serious deviation from established administrative law. Sup. Ct. R. 10(c) indicates that among the reasons the Court considers in granting a writ of certiorari is when a United States Court of Appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court.

CONCLUSION

For the reasons stated above, the Petitioner respectfully requests Your Honorable Court to grant a Writ of Certiorari as entered.

Respectfully submitted

_____

Laurence Rene', Goodman

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

LAURENCE RENE' GOODMAN,	)	
	)	
Plaintiff-Appellant,	)	No. 05-1440
	)	
v.	)	(D. Colo.)
	)	
UNITED STATES OF AMERICA,	)	(D.C. No. 04-CV-1162-LTB-MJW)
	)	
Defendant-Appellee.	)	

ORDER AND JUDGMENT

Before HENRY, BRISCOE, AND O'BRIEN, Circuit Judges

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Laurence Rene' Goodman, appearing pro se, appeals the district court's dismissal of his petition for mandamus as moot. The district court concluded that the government had already produced the assessment records relating to Mr. Goodman's unpaid income taxes that Internal Revenue Service was attempting to collect by levy. For the reasons given below, we affirm the district court's dismissal of Mr. Goodman's petition for mandamus as moot.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and condition of 10th Cir. R. 36.3.

I. BACKGROUND

On March 4, 2004, the IRS sent Mr. Goodman a copy of a Notice of Levy to collect unpaid income taxes, penalties, and interest totaling $220,928.33 for 1997 and $145,272.80 for 1998. In a letter to the IRS dated March 23, 2004, Mr. Goodman requested copies of "procedurally proper assessment certificates for the principal of each class of tax assessed," specifically including "the Form 23C Assessment Certificate," "support documents for each assessment certificate," "Form 2162 Notice of Assessment," "Form 3553 Prompt Assessment Billing Assembly," "Form 4907 Notice of Taxpayer Delinquent Account," and "Form 17 notice and demand for payment." He demanded a response "within 20 days from the date the IRS receives this letter." Rec. doc. 1, ex. A at 1-2.

On June 7, 2004, Mr. Goodman filed a "Petition in the Nature of a Writ of Mandamus to Susan Meredith, Agent of the District Director, Internal Revenue Service" in federal district court. *Id.* doc. 1. He said that the IRS had not responded to his March 23, 2004, request for documents and he asked the court to direct Susan Meredith, an IRS employee, to produce a "procedurally correct copy of the document identified as a 'Record of the Assessment' signed by an assessment officer, as required pursuant to Section 6203, Title 26, United States Code." *Id.* at 3.

On August 3, 2004, the United States sent Mr. Goodman Forms 4340, Certificates of Assessment, Payments and other Specified Matters, for 1997 and 1998. *Id.* doc. 14, Exs. 1, 2. Each Form 4340 identified taxpayer, the tax period at issue, the character of the tax – described as "Form 1040," meaning income tax – the amounts assessed, and the date of the assessment.

The district court referred Mr. Goodman's petition to the magistrate judge. The United States filed a motion to dismiss Mr. Goodman's petition as moot. The government acknowledged that, under Section 6203 of the Internal Revenue Code (26 U.S.C.) (I.R.C.), Mr. Goodman was entitled to receive a copy of the assessment records for amounts that the IRS was seeking to collect. The government asserted, however, that Mr. Goodman had been provided with copies of IRS Forms 4340, Certificates of Assessments and Payments, for 1997 and 1998 and that the

petition was therefore moot. Rec. doc. 12, at 3-4. The government attached copies of Mr. Goodman's Forms 4340 to its motion.

Mr. Goodman argued that he was entitled to "summary records" of assessment that he had not yet received. *Id.* doc. 25, at 3. The government then sent Mr. Goodman copies of IRS RACS 006s, which are computer-generated forms that reflect summary information about all of the assessments that the IRS makes on a particular date, and filed a motion to include copies of the RACS 006s in the record. *Id.* at 3, 5 n. 1; docs. 31, 32. Those reports showed the assessment summaries for the dates on which Mr. Goodman's 1997 and 1998 taxes were assessed.

Mr. Goodman moved to strike the Forms 4340 and the RACS 006s from the record. The magistrate judge denied the motions to strike and indicated that he would treat the government's motion to dismiss as a motion for summary judgment, taking into consideration the Forms 4340 and RACS 006s. Mr. Goodman opposed the motion to dismiss, contending that there were material issues of fact in dispute. He also filed a consolidated motion to strike the motion to dismiss and for a continuance to allow him to conduct discovery.

The magistrate judge recommended that the motion to dismiss for mootness, viewed as motion for summary judgment, be granted. The magistrate judge concluded that the government had already produced documents that satisfied the mandates of I.R.C. § 6203 and Treasury Regulations § 301.6203-1 and that Mr. Goodman merely sought to obtain documents in his "preferred format." Rec. doc. 58, at 4-5.

Mr. Goodman filed a motion for a more definite statement, which the magistrate judge denied. Mr. Goodman then filed a motion for recusal or for an evidentiary hearing, in which accused the magistrate judge of "actual bias against [him]." *Id.* doc. 64, at 2 (emphasis in original). The magistrate judge also denied that motion.

The district court adopted the magistrate judge's recommendation with respect to the government's motion to dismiss for mootness, "considered as a Motion for Summary Judgment," and dismissed the action. *Id.* doc. 74, at 2.

II. DISCUSSION

A. Standard of Review

The district court's finding of mootness was embodied in an order granting the defendant's motion for summary judgment. We review de novo a judgment of dismissal for mootness. *Anderson v. U.S. Dep't of Health & Human Servs.*, 3 F.2d 1383, 1384 (10th Cir. 1993). Subject matter jurisdiction is appropriately dealt with by means of a motion to dismiss under Federal Rule of Civil Procedure Rule 12(b)(1) motion, and we will treat the district court's summary judgment ruling as if it were a ruling on a Rule 12(b)(1) motion.

"A case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *City of Erie v. Pap's A.M.*, 529 U.S. 277, 287 (2000) (internal quotation marks omitted). "The core question in a mootness inquiry is whether granting a present determination of the issues offered. . . will have some effect in the real world." *Kennecott Utah Copper Corp. v. Becker,* 186 F.3d 1261, 1266 (10th Cir. 1999) (internal quotation marks omitted) (omission in original).

To be entitled to mandamus relief, Mr. Goodman must show (1) a clear right to relief, (2) a "plainly defined and peremptory" responsibility of the respondent to perform the act in question, and (3) the absence of any other adequate remedy. *Rios v. Ziglar,* 398 F.3d 1201, 1206 (10th Cir. 2005). Because Mr. Goodman is representing himself on appeal, his pleadings will be liberally construed. See *Haines v. Kerner,* 404 U.S. 519, 520-21 (1972). We agree with the district court that Mr. Goodman cannot make these showing, and that he received all information to which he is entitled.

B. Section 6203 of the Internal Revenue Code

Section 6203 of the Internal Revenue Code provides that an assessment of tax "shall be made by recording the liability of the taxpayer in the office of the Secretary in accordance with rules or regulations prescribed by the Secretary." Treasury Regulation § 301.6203-1 amplifies this rule by stating that an assessment is made "by an assessment officer signing the summary record of assessment," which shall include the "identification of the

taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment."

Section 6203 also provides that "a copy of the record of assessment" must be furnished to the taxpayer upon request. Treasury Regulation § 301.6203-1 specifies that "[i]f the taxpayer requests a copy of the pertinent parts of the assessment which set forth the name of the taxpayer, the date of assessment, the character of the liability assessed, the taxable period, if applicable, and the amounts assessed."

No particular form or document is needed to satisfy the requirements of I.R.C. § 6203 and Treasury Regulation § 301.6203-1. Instead, an assessment record is sufficient if it provides the taxpayer with the required information. *See, e.g., Taylor v. IRS*, 69 F.3d 411, 419 (10th Cir. 1995) (noting that Forms 4340 provide "all of the information required under Treasury Regulation § 301.6203-1"); *Koff v. United States*, 3 F.3d 1297, 1298 (9th Cir. 1993); *Gentry v. United States*, 962 F.2d 555, 558 (6th Cir. 1992); *United States v. Chila*, 871 F. 2d 1015, 1017 (11th Cir. 1989).

Until its transition to computerized recordkeeping, the IRS generally used Form 23C for the summary record of assessment known as the RACS 006. Both forms have been recognized as summary records of assessment within the meaning of I.R.C. § 6203 by this court. *March v. IRS*, 335 F.3d 1186, 1188 (10th Cir. 2003); *see also Roberts v. Comm'r*, 329 F.3d 1224, 1228 (11th Cir. 2003).

IRS Form 4340, Certificate of Assessments and Payments, also has been deemed to satisfy the requirements of I.R.C. § 6203 and Treasury Regulation § 301.6203-1. This court and others have held that Form 4340 provides "all of the information required under Treasury Regulation § 301.6203-1," because it identifies the taxpayer, informs him of the character of the liability assessed, the tax periods given rise to the assessments, and the amount of the assessment. *Taylor*, 69 F.3d at 419; *see also March*, 335 F.3d at 1188; *Guthrie v. Sawyer*, 970 F.2d 733, 737 (10th Cir. 1992). According to the government, the District IRS Form 4340 is an official document that is derived from coded information in a taxpayer's tax account, including Forms 1040 and related documents. See *United States v. Buford*, 899 F.2d 1406 (5th Cir. 1989).

C. Section 6203 as Applied to Mr. Goodman

We have recognized that the RACS 006 is a summary record of assessment "[l]ike Form 23C, but that it is instead "generated on a computer." *March,* 335 F.3d at 1188. The court has held that RACS oo6 "satisfies the signature and certification requirements of 26 C.F.R. § 301.6203-1." *Id.* at 1188-89.

We agree with the government that Mr. Goodman's "right to relief" has already been honored, and the government has not further "responsibility" to Mr. Goodman is this regard. *See Rios,* 398 F.3d 1201, 1206 (10th Cir. 2005). The United States provided him with two sets of documents reflecting the assessments of his 1997 and 1998 taxes, first the Forms 4340 and then the RACS 006s. Despite Mr. Goodman's continuing protests, he has now received all of the information to which he is entitled under I.R.C. § 6203 and Treasury Regulation § 301.6203-1. The district court was correct in upholding, after a de novo review of the record, the magistrate judge's recommendation for dismissal of Mr. Goodman's petition as moot.

III. CONCLUSION

Accordingly, we AFFIRM the district court's order and DISMISS Mr. Goodman's appeal as MOOT.

Entered for the Court,

Robert H. Henry
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 04-cv-01162-LTB-MJW

LAURENCE RENE' GOODMAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent,

**RECOMMENDATION REGARDING
UNITED STATES OF AMERICA'S MOTION TO DISMISS
FOR MOOTNESS
(DOCKET NO. 12)
AND
ORDER REGARDING
UNITED STATES OF AMERICA'S MOTION TO
ALTER/AMEND CAPTION AND CERTIFICATE OF
COMPLIANCE WITH D.C.COLO.LCIVR. 7.1
(DOCKET NO. 55)**

Entered by Magistrate Judge Michael J. Watanabe

This case is before this court pursuant to a General Order of Reference issued by Chief Judge Lewis T. Babcock on June 8, 2004, (Docket No. 2). The court has reviewed the motions, responses and replies. In addition, the court has taken judicial notice of the court's file and has considered applicable Federal Rules of Civil Procedure and case law. The court now being fully informed makes the following recommendation and order.

Allegations in the Petition

Petitioner seeks mandamus relief in his "Petition in the Nature of a Writ of Mandamus to Susan Meredith, Agent of the District Director, Internal Revenue Service" ("Petition"), filed on June 7, 2004 (Docket No. 1). He requests that the United States of America provide him with a copy of his record of assessment, pursuant to 26 U.S.C. § 6203. Petitioner attaches a Notice of Levy regarding his federal income tax liability for tax years 1997 and 1998 as Exhibit B to his Petition.[1]

United States of America's Motion to Dismiss Considered as a Motion for Summary Judgment

Respondent United States of America moves the court to dismiss it from the case pursuant to Fed.R.Civ.P. 12(b)(1) for lack of subject matter jurisdiction. In its Motion to Dismiss, filed on August 4, 2004 (Docket No. 12). Respondent United States of America argues that this matter is moot because the United States of America has already provided the Petitioner with the responsive Form(s) 4340 that he is seeking. (See Def's Motion to Dismiss, at 2).

As relayed in its earlier order (Docket No. 45), since this court is allowing the summary records of assessment and taking the same into consideration in connection with the United States of America's Motion to Dismiss for MOOTNESS (Docket No. 12), this court will therefore consider the Respondent United States of America's Motion to Dismiss for MOOTNESS (Docket No. 12 as a motion for summary judgment.

Discussion

Summary judgment is appropriate "if the pleadings, deposition, answers to interrogatories, and admission on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and that the moving part is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). I applying this standard, we examine the factual record and draw reasonable

[1] The Petition fails to specify the particular tax or type of tax for the record of assessment.

inferences therefrom in a light most favorable to the nonmoving party. Burlington v. United Air Lines, Inc., 186 F.3d 1301, 1313 (10th Cir. 1999). Judgment as a matter of law is appropriate when there is no legally sufficient evidentiary basis for a reasonable jury how the to find for the nonmoving party. Fed.R.Civ.R. 50(a).

The moving party shoulders "the initial burden to show that there is an absence of evidence to support the nonmoving party's case." Thomas v. IBM, 48 F.3d 478, 484 (10th Cir. 1995). If the moving party meets this burden, it falls to plaintiff to "identify specific facts that show the existence of a genuine issue of material fact." Id. "The party opposing the motion must present sufficient evidence in specific, factual form for a jury to return a verdict in that party's favor." Id.

Material facts ore facts that might affect the outcome of the suit; the court determines materiality by reference to the substantive law at issue in the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Disputes over irrelevant or unnecessary facts should not be considered. Id. If, given the evidence submitted, a reasonable jury could hold for the nonmoving party, the dispute over material facts is "genuine." Id. Where there is a complete failure of proof on an essential element of the case for the nonmoving party, all other facts become immaterial, and the moving party is entitled to judgment as a patter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

PETITION IS MOOT

The Mandamus Act, 28 U.S.C. § 1361 states as follows, "The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States of America or any agency thereof to perform a duty owed to the plaintiff." Three jurisdictional elements must manifest themselves before manifest themselves before mandamus can issue: (1) the plaintiff must have a clear right to the relief; (2) the defendant must have a clear duty to act; and (3) no other adequate remedy must be available. Jones v. Alexander, 609 F.2d 778, 781 (5th Cir. 1980).

Here, the court does not have to determine whether the Petitioner has satisfied any of these elements, because the Petition

is moot. Subsequent to the filing of the Petition, the Respondent has fully acknowledged Petitioner's right to the record of assessment regarding his federal tax liability, and to have copies made available to him, pursuant to 26 U.S.C. 6203 and Treas. Reg. § 301.6203-1. In fact, the Respondent sent the original Forms 4340, and the Certificates of Assessments and Payments for Petitioner's 1997 and 1998 federal income tax liabilities, to the Petitioner via overnight delivery on August 3, 2004. This was reported in Respondent's Motion to Dismiss, and supported by the First and Second Declarations of U.S. Department of Justice, Tax Division Attorney, Anita Machhar, and the Certificate of Service. (See Def's Motion to Dismiss, a 4 Decl. Of Anita Machhar; Second Decl. Of Anita Machhar).

Despite receiving the requested documents, Petitioner is now complaining that the documentation provided is deficient because they were not produced in Petitioner's preferred format. Petitioner, in his "Petitioner's Amended Motion in Opposition to Respondent's Motion to Dismiss for MOOTNESS," which the court construes as his Response to Respondent's Motion to Dismiss, still argues that the Form 4340 provided by Respondent is insufficient, because it does not meet all the regulatory requirements of 26 C.F.R. § 301.6203-1. (Petitioner's Resp. to Respondent's Motion to Dismiss, at 3-6). But, as discussed below, Petitioner's claim is unsupported.

Internal Revenue Code § 6203 provides: "The assessment shall be made by recording the liability of the taxpayer in the office of the Secretary in accordance with rules or regulations prescribed by the Secretary. Upon request of the taxpayer, the Secretary shall furnish the taxpayer a copy of the record of the assessment." 26 § U.S.C. 6203. The Treasury Regulation implementing 26 U.S.C. § 6203 states that the summary record of assessment shall, through supporting records, "provide identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment." 26 C.F.R. § 301.6203-1. The regulation further provides that if the taxpayer requests a copy of the record of assessment, "her shall be furnished a copy of the pertinent parts of the assessment which set forth the name of taxpayer, the date of

assessment, character of the liability assessed, the taxable period, if applicable, and the amounts assessed." Id.

Upon review of the documents provided by the Respondent, and considering that the Petitioner did receive them in the mail, the court finds that all of the requirements of 26 C.F.R. § 301.6203-1 have been met. The produced documents do contain the name of the taxpayer, the date if the assessment, the character of the liability assessed, the taxable period, the amounts assessed, and the signatures of the assessment officer and accounting technician. As such, and when considered along with the Declaration of the Tax Division Attorney, Anita Machhar, and the Certificate(s) of Official Record signed by the Internal Revenue Service Supervisor, Charmian Setear, the record demonstrates th the Respondent has provided Petitioner with all documents responsive to his request. (Docket No. 14). Therefore, because Respondent has already furnished Petitioner with his requested records, Petitioner's claim is moot. Crooker v. U.S. State Department, 628 F.2d 9, 10 (D.C. Cir. 1980)("Once the records are produced the substance of the controversy disappears and becomes moot since the disclosure which the suit seeks has already been made."); Continental Oil Co. v. State Bd. Of Equalization, 494 P.2d 545, 649 (Okl. 1972)(finding it unnecessary to issue a writ of mandamus when Respondent will proceed with reasonable dispatch). Accordingly, the court concludes that the Respondent is entitled to summary judgment in this matter.

United States of America's Motion to Alter/Amend Caption and Certificate of Compliance with D.C. Colo. LCivR. 7.1

The Respondent moves the court to alter of amend the caption in order to conform with the information contained in the docket in this matter. (Docked No. 55). From the time this matter was initiated, Petitioner had always named Susan Meredith and/or other employees of the Internal Revenue Service in their official capacity, the proper Respondent, is the United States of America, and No Ms. Meredith. Since it is clear to the court that the United States of America, and not Ms. Meredith, is ht proper party Respondent, the caption should be changed accordingly to reflect this fact.

WHEREFORE, for the foregoing reasons, it is hereby

RECOMMENDED that United States of America's Motion to Dismiss for MOOTNESS, considered as a Motion for Summary Judgment, filed on August 4, 2004 (Docket No. 12), and this action be dismissed.

FURTHER ORDERED that United States of America's Motion to Alter/Amend Caption and Certificate of Compliance with D.C.Colo.L.CivR. 7.1, filed on February 8, 2005 (Docket No. 55), is GRANTED.

NOTICE: Pursuant to 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b), the parties have ten (10) days after service of this recommendation to serve and file written, specific objections to the above recommendation with the District judge assigned to the case. The District Judge need not consider frivolous, conclusive, or general objections. A party's failure to file and serve such written, specific objections waives de novo review of the recommendation by the District judge, Fed. R. Civ. P. 72(b), Thomas v. Arn, 474 U.S. 140 148-53 (1985), and also waives appellate review of both factual and legal questions. Makin v. Colorado Dep't of Corrections, 183 F.3d 1210 (10th Cir. 1999); Talley v. Hesse, 91 F.3d 1411, 1412-13 (10th Cir. 1996).

Dated: February 22, 2005
Denver, Colorado

Michael J. Watanabe
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Laurence Rene', Goodman	)	
	)	
Petitioner	)	Judge: Lewis T. Babcock
	)	
v.	)	Case: 04-B-1162 (MJW)
	)	
Susan Meredith	)	
	)	
Respondent	)	
	)	
	)	

NOTICE OF APPEAL

Notice is hereby given that Laurence Rene', Goodman, Petitioner in the above named case, hereby appeal to the United States Court of Appeals for the Tenth Circuit from the final judgment entered in this action on the 4th day of August, 2005.

Respectfully Submitted

_____

Laurence Rene', Goodman

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

LAURENCE RENE' GOODMAN,	)	
	)	
Plaintiff-Appellant,	)	No. 05-1440
	)	
v.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant-Appellee.	)	

ORDER

Filed August 14, 2006

Before HENRY, BRISCOE, AND O'BRIEN, Circuit Judges

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Further, appellant's motion to stay is denied.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

by:
Deputy Clerk

(2)

FILED
JAN 18 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 06-636

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 2006

Laurence Rene', Goodman

Petitioner

v.

UNITED STATES

Respondent

On Petition for Writ of Certiorari
to the United States Court of Appeals
For the Tenth Circuit

PETITION FOR REHEARING

Laurence Rene', Goodman
Petitioner Pro Se
C/o 299 Bear Drive
Golden [80403]
Colorado, USA
303-277-1539

No. 06-636

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2006

Laurence Rene', Goodman
Petitioner

v.

UNITED STATES
Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PETITION FOR REHEARING

The Petitioner Laurence Rene', Goodman respectfully moves this Court for an order (1) vacating its denial of the petition for writ of certiorari, entered on December 11, 2006, and (2) granting the petition. As grounds for this motion, Petitioner states the following:

I

This Court should grant the Petition for Rehearing for four reasons pursuant to Sup. Ct. R. 44.2 and *Hickmanv. Taynor*, 327 U.S. 808, 328 U.S. 876 (1946), 329 U.S. 495 (1947); *Brinkerhoff-Faris Trust Co. v. Hill*, 280 U.S. 604, (1929), 281 U.S. 673 (1930); for other grounds not previously presented in the Petition for Certiorari:

1. Interest of Justice

The upholding of treaties is a matter of international concern. Article VI, section 2 of the U.S. Constitution states;

> "all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

It can be understood that the UN Charter, having been ratified by the United States, is the supreme law of the land. When the United States signed the UN Charter in 1945, thereby adhering to the human rights provisions of articles 55 and 56 of the charter, it thus was extending its longstanding recognition of an "international minimum standard" to include all human beings rather than just aliens. Similarly, by signing subsequent international human rights instruments such as the Universal Declaration of Human Rights, the UN Covenant on Civil and Political Rights, and the American Convention on Human Rights, the United States was reaffirming its commitment to the basic civil and political rights contained therein.

In the Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948). There is an obligation under Article 8 right to an effective remedy:

> "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."

Article 10 to provide a fair and public hearing by an independent and impartial tribunal.

> "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the

> determination of his rights and obligations and of any criminal charge against him."

The creation of the specific human right to a fair trial recognized under customary international law, which must be respected by any judicial system aspiring to international legitimacy. In the International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976. An obligation exists under art. 14 to provide a fair and public hearing by an independent and impartial tribunal. *[See Appendix "E"].*

Due Process Rights are additionally protected under U.S. Const. amend. V, which states;

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time in time of War or public danger; or shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, C.H.R. res. 2005/35, U.N. Doc. E/CN.4/2005/L.10.Add.11 (19 April 2005);

> VIII. ACCESS TO JUSTICE
>
> "12. A victim of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as provided for under international law. Other remedies available to the victim include access to administrative and other bodies, as well as mechanisms, modalities and proceedings conducted in accordance with

domestic law. Obligations arising under international law to secure the right to access justice and fair and impartial proceedings shall be reflected in domestic laws."

The record in Federal District Court Case No. 04-B-1162 and affirmed by the 10th Circuit in Case No. 05-1440 establishes expressions of arbitrariness or gross incompetence that justice has been mal-administered and the proceedings are so faulty as to exclude all reasonable expectation of a fair decision. The Petitioner alleges that the conduct of the lower courts affirmed by the 10th Circuit appears to demonstrate a procedural denial of justice by "departure" from "the usual course of judicial proceedings." The irregularity of the court proceedings shown in the record of Case No. 04-B-1162 demonstrates a disregard for the Federal Judicial Code, Federal Rules of Civil Procedure, and Federal Rules Evidence deemed essential for due process.

II. Jurisdiction

The Petitioner alleges that the reason that the Respondent has failed to produce a valid assessment is that the Respondent does not have jurisdiction to make one.

Petitioner has never lived in, conduct business in, or have anything to do with, an internal revenue district. [see Appendix Exhibit "A" concerning "internal revenue districts"] Petitioner also was not involved in any activity that would be relevant to the Assistant Commissioner (International). [see Appendix Exhibit "B" IRM page detailing the ACI's jurisdictional boundaries]

And while the IRS substantially reorganized in 1999, and the Office of Assistant Commissioner (International) no longer exists, for the purposes of subtitle 'A' the jurisdiction of the former Office of Assistant Commissioner (International) is now exercised by the Director, Compliance. The subtitle 'A' jurisdictional statement concerning the Director, Compliance is found at IRM 4.12.1.5.6.1 (05-03-1999). *[See Appendix Exhibit "C"]*

The Petitioner alleges it should be noted, and it is significant that, there are no general or authoritative citations (USC, CFR, Treasury Orders, etc.) that require a citizen of a state

of the Union to file a Form 1040 on generic domestic, non-16th Amendment, non-government nexus, income.

The Petitioner alleges that the Meredith was creating "dummy returns" for the Petitioner in the ASFR Program and sending the Petitioner notices, such as the Notice of Deficiency.

Although Petitioner did not then know what is know now, the fact of the matter is that there is no United States internal revenue law, in force then or now, that imposed any tax upon me given my status and activities in the aforementioned years. The fact that at the time Petitioner was ignorant of the realities of U.S. tax law (as is the vast majority of the American public) and was unable to provide the proper responses does not make me subject to U.S. tax law.

The Petitioner alleges that information returns improperly filed against the Petitioner does not make the Petitioner subject to the internal revenue laws of the United States if in fact Petitioner has not been involved in any activities cognizable by such laws.

For clarity's sake, Petitioner wishes to emphasize that Petitioner is not contending that there is any legal shortcoming with the IRC, only that it does not impose any tax upon the Petitioner, given Petitioner's status and activities.

The Petitioner alleges that this Court has referred to Acts of Congress as "the broad language of the statute" and in tax matters it is the universal rule, allowing for only rare and limited exception, that the Secretary must promulgate implementing regulations to bring force and effect to the statute. [See 26 USC 7805(a); *California Bankers Association v. Schultz*, 416 US 25 at 44; *Dodd v. U.S.*, 223 F Supp 785]

The Petitioner alleges that 26 USC 6321 is the statute by which Congress creates a "statutory lien" when taxes are assessed but not paid.

The question then arises as to whether the Secretary has promulgated implementing regulations for §6321.

A check of the CFR Finding Aids, Parallel Table of Authorities – Table I (2003), reveals that the Secretary has indeed promulgated implementing regulations for §6321. These regulations are found at 27 CFR, Part 70. We also find that in Table II of the Parallel Table of Authorities, §6321 does not appear in the Part 1 listings.

However, since the Parallel Table of Authorities is not exhaustive, and thus not conclusive, one must manually check 26 CFR [in the case of taxes to be assessed on Form 1040 we must look at Part 1] to determine if implementing regulations have been promulgated for §6321. Petitioner has performed that manual check and found no Part 1 regulations for §6321.

One might then reasonably ask if §6321 fits into one of the rare and limited exceptions (mentioned above) to the requirement for implementing regulations. The answer is plainly "no" because the Secretary has promulgated regulations in 27 CFR, thus demonstrating the Secretary's determination that implementing regulations are required for §6321. [There is a regulation in 26 CFR, Part 301, but as you know Part 301 is merely procedural and does not "implement" §6321 for any particular tax.]

Further, 44 USC 1505 requires items to be published in the Federal Register if:

- The item is to have General Applicability and Legal Effect.
- The item is required to be published by Congress.

In this matter, both requirements are in force.

Petitioner alleges that implementing regulations are required for §6321, and that no such regulations exist which implements §6321 for Part 1 – Income Tax on Individuals – the type of tax for which one would file a Form 1040 and the type of tax for which Petitioner has been assessed. Section 6321 states, in its relevant part:

> *If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount...shall be a lien in favor of the United States....*

The alternative administrative collection process preserved by 28 U.S.C. § 3003(b) vests the "delegate" of the Secretary of the Treasury (26 U.S.C. § 7701(a)(12)) with pre-judgment and post-judgment collection authority within internal revenue districts established in compliance with requirements of 26 U.S.C. § 7621 and Executive Order #10289, as amended. There is no evidence that the Secretary of the Treasury has established internal revenue districts in States of the Union since promulgation of the Internal Revenue Code of 1954. It is more probable, but yet to be proven,

that the Treasury Financial Management Service is "delegate" of the Secretary of the Treasury for purposes of 26 U.S.C. § 7701(a)(12)(A), and that the Internal Revenue Service is supposed to function in a support capacity only. Congress did not legislatively create IRS or its predecessor, the Bureau of Internal Revenue, so IRS' "agency" and "delegate" capacity is limited by operation of law. See the statement of IRS organization at 39 Fed. Reg. 11572, 1974-1 Cum. Bul. 440, 37 Fed. Reg. 20960, and the Internal Revenue Manual 1100 through the 1997 edition.

The Petitioner contends the genesis of 26 U.S.C. §§ 6321, et seq. (lien) and §§ 6331, et seq. (levy and distraint) as these sections all originate in 1860's legislation applicable exclusively to alcohol, cotton, and in some instances, tobacco. This is the reason that the only surviving regulation listed in the Parallel Table of Authorities and Rules for §§ 6321 & 6331 is 27 CFR § 70, which is under Bureau of Alcohol, Tobacco and Firearms jurisdiction, as applicable to Subtitle E of the Internal Revenue Code.

III. International Treaty Violation

The Thirteenth Amendment of the United States Constitution specifically prohibits slavery and involuntary servitude, except as a punishment for a person convicted of a crime. The Thirteenth Amendment states:

> "Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.
>
> Section 2. Congress shall have power to enforce this article by appropriate legislation."

The Courts in the United States, including the Supreme Court of the United States, have interpreted the Thirteenth Amendment very broadly to apply to every individual and every race. *Slaughter House Cases*, 83 U.S. 36, 69-72 (1872). In Addition, the courts have stated that the purpose of the Thirteenth Amendment is not only to end slaver but to insure a system of completely voluntary labor. *Pollack v. Willams*, 322 U.S. 4, 17

(1944). It is also clear form these cases that the terms "slavery" and "involuntary servitude" used in the Thirteenth Amendment are at least as broad as the terms "forced or compulsory labor" used in the treaty on Slavery United Nations Conference of Plenipotentiaries on a Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and practices Similar to Slavery, September 7, 1956, 18 U.S.T. 3201, *[see Appendix Exhibit "D"]*.

Under the Vienna Convention on the Law of Treaties, adopted 22 May 1969, entered into force 27 Jan. 1980, art. 18, 1155 U.N.T.S. 331, 336.

> "The State is obligated to refrain from acts which would defeat the object and purpose of a treaty when:
> (a) it has signed the treaty or has exchanged instruments constitution the treaty, subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or
> (b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed."

The Petitioner derives no income under the Assistant Commissioner International Operations. If the assessment provided in Case No. 04-B-1162 is a valid, as the Respondent would have the Court believe, then the Petitioner is "a person of servile status" described in Article 7(b) of the aforementioned treaty.

The Petitioner contends that income tax revenues go 100% to pay interest on the national debt and not a single nickel of it goes to the government. The report from the Grace Commission proves that the personal income tax is used to pay only the interest on the national debt. Petitioner relies on the Grace Commission Report, J. Peter Grace, President's Private Sector Survey (PPSS), to The Honorable Ronald Reagan, President of the United States, The White House, Washington D.C. (January 12, 1984) (in public domain http://www.worldnewsstand.net/1/gracerpt.pdf);

> *"With two thirds of everyone's personal income taxes wasted or not collected, 100 percent of what is collected is*

absorbed solely by interest on the Federal debt and by Federal Government contributions to transfer payments. In other words, all individual income tax revenues are gone before one nickel is spent on the services which taxpayers expect from their Government." (emphasis added)

"That it is contrary to the law of nature will scarcely be denied, seems to be the necessary result of this admission. That every man has a natural right to the fruits of his own labour, as generally admitted; and no other person can rightfully deprive him of those fruits, and appropriate them against his will, seems to be the necessary result of this admission." *The Antelope*, 23 U.S. 66, 120 (1825). "Since the right to receive income or earnings is a right belonging to every person, this right cannot be taxed as privilege." *Jack Cole Company v. MacFarland*, 337 S.W. 2d 453, 456 (1960).

All compensation earned by a Citizen of the 50 states, exercising his or her fundamental Right to Labor in a common, lawful occupation, there is NO LAW within the Internal Revenue Code or Regulations that makes a Citizen of the 50 states, exercising his or her fundamental Right to labor in a common. Lawful occupation in one of the 50 states, liable for the graduated income tax. Non-apportioned direct taxes were Unconstitutional by this Court in *Pollock v. Farmers Loan & Trust Co.*, 158, U.S. 601, 637 (1895).

Compensation for labor earned by citizens of the 50 states, working for the private sector in the 50 states does not constitute income taxable by the federal government. It is not federal "taxable income." Although the law states that the income tax is voluntary, the act of signing a W-4 or 1040 Form is not voluntary when an individual does so because an employer, IRS agent, official, or employee or accountant perceived to have knowledge of tax laws, has misled that individual into believing that such filing of a form or payment of Income Taxes was required (when, in fact, it was not) and that non-compliance would lead to refusal of employment, imprisonment or the seizure of the presumed taxpayers property. The Petitioner derives no income under the Assistant Commissioner International Operations. If the assessment is valid as the Respondents would have the Court

believe in Case No. 04-B-1162 it constitutes slavery, through coercion and fear in violation of 13th Amendment supra, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and practices Similar to Slavery, supra, *[see Article 1 and Article 6 Appendix "D"]*, and the International Covenant on Civil and Political Rights, supra, *[See Article 8(a) and 8 (c) Appendix Exhibit "E"]*.

It has been well established in this Court that Certiorari should be granted where important issues arising under federal treaties, of course, may give rise to review on certiorari. In *Kolovrant v. Oregon*, 366 U.S. 187, 191 (1961), certiorari was granted "because the cases involve important rights asserted in reliance upon federal treaty obligations." See also *Weinberger v. Rossi*, 456 U.S. 25 (1982), where certiorari was granted to consider whether a federal statutory reference to a "treaty include an executive agreement. And in *Sumitomo Shoji America, inc. v. Avaghano*, 457 U.S. 176 (1982), where certiorari was granted to consider whether a treaty with Japan provides a defense to a federal employment discrimination suit.

IV. Court's failure to follow their own rules

The Petitioner alleges that this Court's denial of justice by denying the writ of certiorari constitutes the Court's failure to follow their own rules.

Sup. Ct. R. 10(a) indicates that among the reasons this Court considers granting a writ of certiorari is when a United States Court of Appeals has entered a decision in conflict with decisions of another United States Court of Appeals on the same important matter. Conflict exists between the Tenth, First, and Eleventh Circuit Courts and the Third, Fifth, Sixth, Seventh, Eighth, and Ninth Circuit Courts claimed in the petition for certiorari.

Sup. Ct. R. 10(c) indicates that among the reasons the Court considers in granting a writ of certiorari is when a United States court of appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court. Among the relevant teachings of this Court's which the District court and the Tenth Circuit's

failure to conform its decision to are; *Hawaii v. Gordon, Land v. Dollar, Dugan v. Rank, Larson v. Domestic, Foreign Commerce Corp., Washington Legal Found. v. U. S. Sentencing Comm'n, North Carolina v. Temple Adicks v. S.H. Kress Co., U.S. v. Lovasco, Gonzales v. Buist, Holt v. United States, Telephone Cases, Lynch v. Household Finance Corp., Matthews v. Eldridge, Arnstrong v. Monzo, Morrill v. Jones, Gould v. Gould, U.S. v. Morton Salt Co., Chevron, U.S.A., Inc v. Natural Resources Defense, Louisiana Public Service Com'n v. F.C.C., Lyng v. Payne, Ragsdale v. Wolverine World Wide, Inc.,* and *Paperwork Reduction Act, Dole v. United Steel workers.*

U.S. Const. Amend. III created the judicial Power of the supreme court. The Petitioner contends it is the duty of this Court to hear this case and relies on *Downes v. Bidwell*, 182 U.S. 244, 382 (1901) which states;

> "It will be an evil day for American liberty if the theory of government outside of the supreme law of the land finds lodgment in out constitutional jurisprudence. No higher duty rests upon this court than to exert its full authority to prevent all violation of the principles of the Constitution."

For the reasons stated above, the Petitioner respectfully requests Your Honorable Court to grant a Writ of Certiorari as entered.

Respectfully submitted

Laurence Rene', Goodman

Laurence Rene', Goodman

Appendix Exhibit "A"

Internal Revenue Districts

The US government has decided to play a little trick on you. But don't worry, it only allows them to scour the country for so-called "tax evaders" (who aren't actually evading anything), summons people for books and records the IRS has no right to see, assess taxes that aren't really owed, create liens they no legal right to exist, and levy upon your property without any legitimate right to do so.

All of the activities listed above begin with "canvassing" and "examination", which requires you or your business to be within an internal revenue district. Of course that would lead us to ask where such revenue districts are located. Although that's a reasonable question, the first question we need to ask should actually be, "Who is authorized by law to establish internal revenue districts and has that person actually established any"?

There are several legal documents that speak to this subject, but one should start with the tax code. Section 7621 authorizes the President to establish internal revenue districts:

> *The President shall establish convenient internal revenue districts for the purpose of administering the internal revenue laws. The President may from time to time alter such districts.*

Has the President actually done that? Well, sort of. While the President hasn't actually created any internal revenue districts, he delegated that particular job to another member of the government. The note at the bottom of 7621 states:

> *For delegation to the Secretary of the Treasury of authority vested in President by this section, see section 1(g) of Executive Order No. 10289*

So we know that the President delegated this task to one of his cabinet officers – the Secretary of the Treasury. The next prudent question is; has the Secretary actually established internal revenue districts, and if so, where?

The answer to that question is "yes", the Secretary has established internal revenue districts. He has done so in Treasury

Order 150-01. In T.O. 150-01 we find that the Secretary has created 33 internal revenue districts that span the nation and cover every state in the Union. O.K., so what's the problem?

Although many Americans aren't aware of it, all written authorities (except Acts of Congress) that purport to have "general applicability" upon any person or group of persons, must have corresponding "regulations", and these regulations must be published in the Federal Register. There are however a few exceptions.

Section 7621 does not require regulations for two reasons. First, the statute is so short and clear that no regulations are required; additionally it has no impact on the public generally because it simply "authorizes" The President to do something and dose not lay any duty upon the public.

However, once the President delegated that authority to the Secretary, the Secretary needed to create regulations to let the public know exactly what he was doing and how it would (or might) affect the public. Accordingly, the Secretary created regulations associated with the authority delegated to him by the President in Executive Order 10289.

The regulations the Secretary created for EO 10289 are found in Title 19 of the Code of Federal Regulations (CFR), Part 101. We know this because the nice folks at the National Archive and Records Administration (NARA) have very kindly provided us with a cross-reference index that shows us which regulations correspond to which statues or Executive Orders (EO). This index is known as the "Parallel Table of Authorities".

E.O. 10289 .....19 Part 101

So, what does 19 CFR, Part 101, say? Here is the opening statement that defines the scope of the Part 101:

> Scope. *This part sets forth general regulations governing the authority of Customs officer, and the location of Customs ports of entry, service ports and of Customs stations. It further sets forth regulations concerning the entry and clearance of vessels at Customs stations and a listing of Customs pre-clearance officers in foreign countries. In addition, this part*

contains provisions concerning the hours of business of Customs offices, the Customs seal, and the identifications cards issued to Customs officers and employees. [underlines added]

As you can see, the Secretary has not chosen to create internal revenue districts for the general tax purposes, by has created said districts ***only*** for certain matters pertaining to the customs laws of the United States – including the collection of customs duties (taxes).

This dovetails perfectly with the CFR's Parallel Tables of Authority and Rules entries for "canvassing" and "examinations". According to the National Archive and Records Administration (the nice folks who compile and publish the CFR and the Federal Register) the only "implementing regulations" for 26 USC 7601 and 7602 are for issues pertaining to alcohol importation:

7601-7606 .....27 Part 70
7602 .....27 Parts 170, 296

Since the Secretary's regulations designate only certain "places" as internal revenue districts, I have underlined the phrases (in "Scope" above) that designate the places the Secretary has established as U.S. internal revenue districts.

In short, the internal revenue districts named in T.O. 150-01 do not cover the entire area of a country, or part of a state, named as the district. These revenue districts are limited to the boundaries of "Customs ports of entry", "service ports" and "Customs stations".

As an example: the internal revenue district referred to in T.O. 150-01 as the "Los Angeles district" only embraces the Long beach and Los Angles harbors and the Los Angeles International Airport. A complete list of ports designated by the Secretary of the Treasury for customs purposes can be found in regulations promulgated by the Secretary of Commerce.

In other words, while most IRS officers blindly believe that when they are assigned to the Los Angeles District Office they have authority to "canvass", and conduct "examinations", anywhere in the Los Angeles area, the law says something

entirely different. The law says that such activities may only take place within "internal revenue districts" and those "internal revenue districts" are specifically designated locations within the broad area known as the Los Angeles district area.

Now that we know whet the law actually says, lets look at the impact.

> **Internal Revenue Code, section 7601** – *The Secretary shall... cause officers or employees of the Treasury Department to proceed... through each internal revenue district and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax...*

If you only read T.O. 150-01, you'd think it blanket authority to canvass the entire county for people who may owe a tax. Having read the regulations for EO 10289 (which authorizes T.O. 150-01) we now know that such canvassing (and its associated "examinations") can only take place in a designated customs area, because those designated customs areas ***are*** the internal revenue districts, as established by the Secretary of the Treasury on behalf of the President.

An argument might be possible in which, because 19 CFR, Part 101, also establishes the general authority of customs officers, internal revenue districts exist wherever a customs officer is executing his official duties. However, even if that is so, the significance is still evident – places that might be considered and internal revenue district would be such place as where a customs officer is conducting his official duty. That still means that there are no internal revenue districts established for any other tax purpose.

Ed Noted: *In March of 2001, Treasury Order 150-01 was cancelled. Researchers are attempting to determine where the relevant parts of T.O. 150-01 have been re-enacted. Interestingly, the statutes that rely T.O. 150-01 have not been repealed or amended since the underlying T.O. was cancelled.*

Appendix Exhibit B

1132 (1-6-78)
Office of the Assistant Commissioner (International)

1132.1 (5-27-88)
Mission of Functional Responsibilities Assistant Commissioner (International)

1132.11 (5-27-88)
International mission

(1) International supports the mission of the service by providing program leadership for all Service international tax matters, including the development, execution and evaluation of multifunctional compliance and assistance programs on a world – wide basis, in a manner which promotes the highest degree of public confidence the tax system's integrity, fairness and efficiency.

(2) To accomplish this mission, international will:

(a) Pursue innovative studios and research to prepare the Service for the changing environment in the international Tax area.

(b) Encourage the highest possible degree of voluntary compliance with U.S. tax laws involving international tax matters through compliance and assistance programs.

(c) Establish and broaden effective tax administration arrangements with foreign, state and other tax authorities and with international organizations.

(d) Manage resources to meet and achieve the Service's operating and strategic goals, working effectively with other Service offices to obtain common objectives.

1132.12 (4-21-89)
Functional Responsibilities

(1) The Assistant Commissioner (International) is the principal official responsible for international tax administration matters and serves as the Competent or Taxation Authority in administering and applying the operating provisions of tax conventions of the United States.

Assists in the development of tax conventions and exchange of information agreements. Provides technical assistance to modernize and strengthen the tax administration systems of foreign, state, and territorial governments, in line with the foreign policy of the United States and its commitments to state government and international organizations in tax administration enhancement activities. Represents the Commissioner in relationships with the Congress, the Department of Treasury, other federal agencies, foreign governments, foreign tax authorities, and international tax organizations. Is responsible for the disclosure function as well as problem resolution. ***Administers the internal revenue laws and related statutes as they relate to U.S. citizens residing abroad, corporations and businesses whose books and records are maintained outside the U.S. and non-resident aliens deriving income from sources within the United States.*** (emphasis added)

Appendix Exhibit C

4.12.1.5.6.1 (05-03-1999)
Jurisdiction of the Director, Compliance

1. As a general rule, the Director, Area 15 has jurisdiction over U.S. Income Tax Returns with a foreign address or where either the taxpayer or the principal books and records are located outside the United States.
   - Returns with a foreign address include Puerto Rico, Virgin Islands, Guam, America Samoa, and the Mariana Islands.
   - Returns with APO/FPO (Army Post Office/Fleet Post Office) are under the jurisdiction of the Director, Area 15.
2. Returns having the principal books and records located outside the United States include:
   - Form 1040 with a claimed foreign income exclusion or deduction (Form 2555 attached).
   - Form 1040NR (Non-Resident Alien).
   - Form 1120F, Income Tax Return of a Foreign Corporation.
3. Except as noted above, all returns with a U.S. address are under the jurisdiction of the area office where the principal books and records of the taxpayer are maintained.
   a. The examiner will write in red " DELINQUENT RETURN SECURED BY EXAMINATION" across the top of Form 5471 or Form 5472.
   b. This will alert the Philadelphia Service Center that the area office has taken appropriate action concerning the penalty under IRC 6038(b), 6038A, 6046A, or 6879.
   c. Form 5471, Information Return with Respect to a Foreign Corporation or Form 5472, Information Return of a Foreign Owned Corporation or Form 5472, Information Return will be sent to the IRS Service Center, 11601 Roosevelt Boulevard, Philadelphia, Pa. 19154.

Area Directors and service center directors are authorized to make determinations that failure to file information return, Form 5471 or Form 5472 was due to reasonable cause. This determination should be made by the director who can conveniently make the evaluation of Form 5471 or Form 5472.

Appendix Exhibit "D"

Slavery 18 U.S.T. 3201;
September 7, 1956, Date-Signed
December 6, 1967, Date-In-Force

STATUS:
[*1] Supplementary convention done at Geneva September 7, 1956; n1
Accession advised by the Senate of the United States of America November 2, 1967;
Accession approved by the President of the United States of America November 9, 1967;
Accession deposited with the Secretary-General of the United Nations December 6, 1967;
Proclaimed by the President of the United States of America December 19, 1967;
Entered into force with respect to the United States of America December 6, 1967.
n1 Texts are as certified by the Secretary-General of the United Nations, New York.

UNITED NATIONS CONFERENCE OF PLENIPOTENTIARIES ON A SUPPLEMENTARY CONVENTION ON THE ABOLITION OF SLAVERY, THE SLAVE TRADE, AND INSTITUTIONS AND PRACTICES SIMILAR TO SLAVERY

TEXT: BY THE PRESIDENT [*2] OF THE UNITED STATES OF AMERICA A PROCLAMATION

WHEREAS the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery was done at Geneva on September 7, 1956, the text of which Convention, in the English, French, Chinese, Russian and Spanish languages, is word for word as follows:

SUPPLEMENTARY CONVENTION ON THE ABOLITION OF SLAVERY, THE SLAVE TRADE, AND INSTITUTIONS AND PRACTICES SIMILAR TO SLAVERY

UNITED NATIONS 1956 PREAMBLE

The States Parties to the present Convention Considering that freedom is the birthright of every human being; Mindful that the peoples of the United Nations reaffirmed in the Charter n1 their faith in the dignity and worth of the human person;

- - - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - - -

n1 TS 993; 59 Stat. 1031.

- - - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - -

Considering that the Universal Declaration of Human Rights, proclaimed by the General Assembly of the United Nations as a common standard of achievement for all peoples and all nations, states that no one shall be held in slavery or servitude [*3] and that slavery and the slave trade shall be prohibited in all their forms;

Recognizing that, since the conclusion of the Slavery Convention signed at Geneva on 25 September 1926, n2 which was designed to secure the abolition of slavery and of the slave trade, further progress has been made towards this end;

- - - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - - -

n2 TS 778; 46 Stat. 2183.

- - - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - -

Having regard to the Forced Labour Convention of 1930 n3 and to subsequent action by the International Labour Organisation in regard to forced or compulsory labour;

- - - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - - -

n3 Convention no. 29, adopted at Geneva June 28, 1930 (39 UNTS 55), as modified by the Final Articles Revision Convention, adopted at Montreal Oct. 9, 1946 (38 UNTS 3).

- - - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - -

Being aware, however, that slavery, the slave trade and institutions and practices similar to slavery have not yet been eliminated in all parts of the world;

Having decided, therefore, [*4] that the Convention of 1926, which remains operative, should now be augmented by the conclusion of a supplementary convention designed to intensify national as well as international efforts towards the abolition of slavery, the slave trade and institutions and practices similar to slavery; Have agreed as follows:

SECTION I INSTITUTIONS AND PRACTICES SIMILAR TO SLAVERY

Article 1

Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention signed at Geneva on 25 September 1926:

(a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined; ([*5] b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;

(c) Any institution or practice whereby:

(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or

(ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or

(iii) A woman on the death of her husband is liable to be inherited by another person;

(d) Any institution or practice whereby a child or young person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

Article 2

With a view to bringing to an end the institutions and practices mentioned in article 1 (c) of this Convention, the States Parties

undertake [*6] to prescribe, where appropriate, suitable minimum ages of marriage, to encourage the use of facilities whereby the consent of both parties to a marriage may be freely expressed in the presence of a competent civil or religious authority, and to encourage the registration of marriages.

SECTION II THE SLAVE TRADE

Article 3

1. The act of conveying or attempting to convey slaves from one country to another by whatever means of transport, or of being accessory thereto, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to very severe penalties.
2. (a) The States Parties shall take all effective measures to prevent ships and aircraft authorized to fly their flags from conveying slaves and to punish persons guilty of such acts or of using national flags for that purpose.
(b) The States Parties shall take all effective measures to ensure that their ports, air-fields and coasts are not used for the conveyance of slaves.
3. The States Parties to this Convention shall exchange information in order to ensure the practical co-ordination of the measures taken by them in combating the slave trade and shall [*7] inform each other of every case of the slave trade, and of every attempt to commit this criminal offence, which comes to their notice.

Article 4

Any slave who takes refuge on board any vessel of a State Party to this Convention shall ipso facto be free.

SECTION III SLAVERY AND INSTITUTIONS AND PRACTICES SIMILAR TO SLAVERY

Article 5

In a country where the abolition or abandonment of slavery, or of the institutions or practices mentioned in article 1 of this Convention, is not yet complete, the act of mutilating, branding or otherwise marking a slave or a person of servile status in order to

indicate his status, or as a punishment, or for any other reason, or of being accessory thereto, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to punishment.

Article 6

1. The act of enslaving another person or of inducing another person to give himself or a person dependent upon him into slavery, or of attempting these acts, or being accessory thereto, or being a party to a conspiracy to accomplish any such acts, shall be a criminal offence under the laws of the States Parties to this Convention and [*8] persons convicted thereof shall be liable to punishment.

2. Subject to the provisions of the introductory paragraph of article 1 of this Convention, the provisions of paragraph 1 of the present article shall also apply to the act of inducing another person to place himself or a person dependent upon him into the servile status resulting from any of the institutions or practices mentioned in article 1, to any attempt to perform such acts, to bring accessory thereto, and to being a party to a conspiracy to accomplish any such acts.

SECTION IV DEFINITIONS

Article 7

For the purposes of the present Convention:

(a) "Slavery" means, as defined in the Slavery Convention of 1926, the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, and "slave" means a person in such condition or status;

(b) "A person of servile status" means a person in the condition or status resulting from any of the institutions or practices mentioned in article 1 of this Convention;

(c) "Slave trade" means and includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved [*9] in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a person acquired with a view to being sold or exchanged; and, in general, every act of trade or transport in slaves by whatever means of conveyance.

SECTION V CO-OPERATION BETWEEN STATES PARTIES AND COMMUNICATION OF INFORMATION

Article 8

1. The States Parties to this Convention undertake to co-operate with each other and with the United Nations to give effect to the foregoing provisions.
2. The Parties undertake to communicate to the Secretary-General of the United Nations copies of any laws, regulations and administrative measures enacted or put into effect to implement the provisions of this Convention.
3. The Secretary-General shall communicate the information received under paragraph 2 of this article to the other Parties and to the Economic and Social Council as part of the documentation for any discussion which the Council might undertake with a view to making further recommendations for the abolition of slavery, the slave trade or the institutions and practices which are the subject of this Convention.

SECTION VI FINAL CLAUSES

Article 9

No reservations [*10] may be made to this Convention.

Article 10

Any dispute between States Parties to this Convention relating to its interpretation or application, which is not settled by negotiation, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute, unless the parties concerned agree on another mode of settlement.

Article 11

1. This Convention shall be open until 1 July 1957 for signature by any State Member of the United Nations or of a specialized agency. It shall be subject to ratification by the signatory States, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations, who shall inform each signatory and acceding State.
2. After 1 July 1957 this Convention shall be open for accession by

any State Member of the United Nations or of a specialized agency, or by any other State to which an invitation to accede has been addressed by the General Assembly of the United Nations. Accession shall be effected by the deposit of a formal instrument with the Secretary-General of the United Nations, who shall inform each signatory and acceding State.

Article 12

1. This Convention shall apply [*11] to all non-self-governing, trust, colonial and other non-metropolitan territories for the international relations of which any State Party is responsible; the Party concerned shall, subject to the provisions of paragraph 2 of this article, at the time of signature, ratification or accession declare the non-metropolitan territory or territories to which the Convention shall apply ipso facto as a result of such signature, ratification or accession.
2. In any case in which the previous consent of a non-metropolitan territory is required by the constitutional laws or practices of the Party or of the non-metropolitan territory, the Party concerned shall endeavour to secure the needed consent of the non-metropolitan territory within the period of twelve months from the date of signature of the Convention by the metropolitan State, and when such consent has been obtained the Party shall notify the Secretary-General. This Convention shall apply to the territory or territories named in such notification from the date of its receipt by the Secretary-General.
3. After the expiry of the twelve month period mentioned in the preceding paragraph, the States Parties concerned shall inform the [*12] Secretary-General of the results of the consultations with those non-metropolitan territories for whose international relations they are responsible and whose consent to the application of this Convention may have been withheld.

Article 13

1. This Convention shall enter into force on the date on which two States have become Parties thereto.
2. It shall thereafter enter into force with respect to each State and territory on the date of deposit of the instrument of ratification or accession of that State or notification of application to that territory.

Article 14

1. The application of this Convention shall be divided into successive periods of three years, of which the first shall begin on the date of entry into force of the Convention in accordance with paragraph 1 of article 13.

2. Any State Party may denounce this Convention by a notice addressed by that State to the Secretary-General not less than six months before the expiration of the current three-year period. The Secretary-General shall notify all other Parties of each such notice and the date of the receipt thereof.

3. Denunciations shall take effect at the expiration of the current three-year period.

4. In cases where, [*13] in accordance with the provisions of article 12, this Convention has become applicable to a non-metropolitan territory of a Party, that Party may at any time thereafter, with the consent of the territory concerned, give notice to the Secretary-General of the United Nations denouncing this Convention separately in respect of that territory. The denunciation shall take effect one year after the date of the receipt of such notice by the Secretary-General, who shall notify all other Parties of such notice and the date of the receipt thereof.

Article 15

This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations Secretariat. The Secretary-General shall prepare a certified copy thereof for communication to States Parties to this Convention, as well as to all other States Members of the United Nations and of the specialized agencies.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention on the date appearing opposite their respective signatures.

DONE at the European Office of the United Nations at Geneva, this seventh [*14] day of September one thousand nine hundred and fifty six.

WHEREAS the said Supplementary Convention, in accordance with Article 11 thereof, remained open for signature from September 7, 1956 to July 1, 1957, during which period it

was signed on behalf of certain countries, not including the United States of America, and thereafter has [*38] remained open for accession;

WHEREAS the Senate of the United States of America by its resolution of November 2, 1967, two-thirds of the Senators present concurring therein, did advise and consent to accession to the Supplementary Convention;

WHEREAS the President of the United States of America, in pursuance of the aforesaid advice and consent of the Senate, duly approved on November 9, 1967 the accession of the United States of America to the Supplementary Convention;

WHEREAS it is provided in Article 13 that the Supplementary Convention shall enter into force on the date on which two States have become parties thereto and shall thereafter enter into force with respect to each State on the date of deposit of the instrument of ratification or accession of that State;

AND WHEREAS, pursuant to the aforesaid provisions of Article 13, the Supplementary Convention first entered into force on April 30, 1957, and entered into force with respect to the United States of America on December 6, 1967, the date of deposit by the United States of America of its instrument of accession;

NOW, THEREFORE, be it known that I, Lyndon B. Johnson, President of the United States of America, do hereby proclaim [*39] and make public the said Supplementary Convention, to the end that the same and every article and clause thereof shall be observed and fulfilled with good faith, on and after December 6, 1967, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this nineteenth day of December in the year of our Lord one thousand nine hundred sixty-seven and of the Independence of the United States of America the one hundred ninety-second.

Appendix Exhibit "E"

Partial reprint - Articles 1 to 22 only

International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 Dec. 1966

entry into force **23 Mar. 1976, in accordance with Article 49**
USA ratification **8 Jun. 1992**

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1 . In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.
3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and

freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.
2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3.
(a) No one shall be required to perform forced or compulsory labour;
(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:
(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
(iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the

judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10
1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2.
(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11
No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12
1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of

justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
(g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1 . No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.
2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was

committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
(a) For respect of the rights or reputations of others;
(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Supreme Court, U.S.
FILED
JAN 18 2007
OFFICE OF THE CLERK

No. 06-636

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2006

Laurence Rene', Goodman
Petitioner

v.

UNITED STATES
Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

MOTION FOR LEAVE TO FILE OUT-OF-TIME PETITION FOR REHEARING

Petitioner respectfully moves for leave to file the annexed petition for rehearing of the order of this Court denying the petition for writ of certiorari in this case, entered on December 11, 2006. No timely petition for rehearing was filed in as much as the Petitioner was obligated to file motions and memorandums in Colorado Supreme Court Case No. 06SC533.

Additionally, the complexity of the issues presented in the Petition for Rehearing required considerable time and research. The 25 day time limit for filing the petition fell across the Christmas – New Years Holiday during which three consecutive snow storms each dropping 16" to 48" of snow. Additional days of winds gusting up to 115 mph causing drifting snow resulting in closures of roads, law library, and other essential business services necessary for the timely filing of a fully annexed Petition for Rehearing.

Although this Petition for Rehearing is filed after the expiration of the time prescribed in Rule 44.1, which is based on other grounds not previously presented in the Petition for Certiorari. This Court clearly has power, in its discretion and in the interest of justice, to entertain the petition in these circumstances. See United States v. Ohio Power Co. 353 U.S. 98 (1957); Gorndeck v. Pan American World Airways, 370 U.S. 918 (1962).

Respectfully submitted

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